

STAFF BRIEFING AND COMPANY POLICY for Stage 3 Oral Hearings for Infants.

This note is dated 3rd December 2013.

We currently have 3 issues relating to infant approval where they are MOJ stage 3 oral hearings. I will set out the 3 issues and our current policy which is subject as further guidance is obtained. We know that some firms are disputing the guidance given to all chambers on the subject so we currently have no official guidance. We intend to refer the matter to the BSB/SRA after the 7th January when the rules change to allow us to seek guidance without fear of sanction. Deborah Tompkinson has kindly offered to take these points up with them.

Discounting fees:

3 firms of solicitors have put forward arguments setting out the circumstances where a Stage 3 Infant Approval hearing can be discounted. It is complicated but there would appear to be some circumstances where the case is lost and a CFA is in place where the fee can be reduced. Any other circumstance is considered by the Bar Standards Board (see guidance note issued by the Bar Standards Board) as fee sharing and not permitted. Some firms disagree with the Bar Standards Board advice but the SRA is unlikely to provide a decision so the problem is currently undecided.

Until we have been given further guidance, we will only accept Stage 3 Infant Approvals on the basis they are paid at £250 + VAT each. (see below).

Per Child or Per Case Number:

There has now been further discussion as to the fee for a hearing when there is 2 or more infants but under 1 case number. Tahir Khan and Zia Rahman have both confirmed that the fee is per child and that is what the court will and must award. Not per case number as we had understood previously.

If our instructing solicitor is not in agreement with this, we have been advised to refer the details of the case and firm to the BSB & SRA for advice on whether it amounts to a breach of either body's code of conduct and/or views on any other relevant legislation that might be engaged.

Until we are been given further guidance, we will only accept Stage 3 Infant Approvals on the basis they are paid at £250 + VAT per child. (see below).

Review following outcome:

We are now starting to see disputes arising between Counsel and solicitors relating to what was awarded at court for multiple cases. If there is more than 1 infant on a file, please confirm in advance that we are able to claim a fee per child and that is what will be put on the costs schedule.

Should the opposite arise and the fee awarded is lower than that quoted, please discuss it with Counsel so we can ensure the correct fee is claimed. Claiming less than was awarded will be considered fee sharing and not allowed under the current guidance which we accept is in dispute.

Company Policy:

Whilst these issues remain in dispute and we find ourselves without any agreement between the Bar Standards Board and the SRA, we have to adopt a common policy to ensure we are consistent in everything we do. I will circulate this document to all members for comment and we can then place

it on our website so all staff can refer to it and explain to solicitor clients that this is our “current” policy until further guidance is available. We accept some firms may use other chambers who we know to adopt a different approach. We do not feel it is appropriate to adopt a discounted fee model which could be considered as fee sharing as there is even talk about it being considered by the regulator as a criminal offence. Hence the need for this clear guidance.

Stephen Ward, Managing Director, 1st December 2013