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Family Finance Flyer No.68 Barristers Fees and Transparency – the Bell Tolls

Recent Reports on Transparency at the Bar:

The Bar Standards Boards recently published its research findings (July 2017) in relation to the satisfaction of individuals, who had recently used the services of barristers in family law matters. The outcome was broadly positive.

However, 83% of those surveyed believed that barristers charge higher fees than other legal providers and more than half those sampled indicated that they were not confident that they had the appropriate information to make an informed decision on who to approach for advice on a family law matter.

The Competition and Markets Authority ('CMA') '*Legal Services and Market Study*', published last December (2016), found a disappointing position across the provision of legal service generally. In particular, that:-

'Consumers find it hard to make informed choices because there is very little transparency about price, service and quality – for example, research conducted by the Legal Services Board (LSB) found that only 17% of legal services providers publish their prices online. This lack of transparency weakens competition between providers and means that some consumers do not obtain legal advice when they would benefit from it;'

The CMA recommended a number of measures to address this situation being:-

- to require much higher standards of transparency by legal services providers... recommending that the regulators develop new minimum standards for disclosures of price, service, redress and regulatory status, and requiring providers to adhere to them;
- to make better information available to assist consumers when they are identifying their legal needs and the types of legal services providers who can help them.
- to facilitate the development of digital comparison tools (DCTs) to help consumers compare providers of legal services, just as they do in many other markets.

The Bar Standards Board has now in response to the CMA findings identified minimum transparency measures considered to be a basis for best practice and is about to embark upon a pilot scheme of invited chambers and entities in the UK in testing future potentially mandatory transparency requirements. Ashley Murray Chambers has been invited to be part of this pilot scheme.

The Bar Standards Board own commissioned report '*Provision of Legal Services by Barristers*' (May 2017) found:-

- the traditional chambers model continued to strongly prevail, but consumers found the model at times slow and inflexible;



- the minority of alternative barrister structures available were the more likely to have fixed fees and to be more innovative in the methods of their legal service provision;
- only 5% of providers at the Bar had plans to change their fee structure in the next 5 years and only 7% the manner of their governance structure;
- consumers want the Bar to be more accessible and to provide more cost effective fee options.
- there was little appetite for change overall at the Bar in respect of greater accessibility or transparency.

Consumer Choice:

Put bluntly, this attitude is wholly unacceptable. Barristers as individuals may be risk averse by nature, but their existence as a profession is dependent upon the demand by the public for their services. It is no longer the case that a client has to consider it a privilege to have a barrister representing them. On the contrary, the client is entitled to question what value the instruction of counsel can add to his or her case.

Within this process, the client is also entitled to have some measure by which there can be an informed choice of the quality of the service the individual barrister under consideration provides. The in-house directories, such as Legal 500, Chambers and Partners and the like are hardly informative to the consumer, carrying as they do one liner tributes without any critical analysis offered. The closest these directories get to an analytical assessment are the use of broad category classifications of practitioners, but again these are based essentially on a peer review with minimal client input.

The Bar as a whole has a responsibility to provide much more information for a real consumer choice to be possible, albeit this depressing absence of qualitative information is notoriously a feature of other professions in the UK, not least, of course, the medical profession.

Price Transparency:

One measure of the barrister's service is, obviously, price. Many chambers have argued that fixed pre-advertised pricing leaves the barrister exposed to undervaluing the work entailed in the case as circumstances out of the control of the parties may extend its length or increase its complexity. That may be so, but subject to the exceptional, that is no reason for the Bar to avoid the transparency of providing much greater advanced fixed fee information to the consumer of the likely cost being embarked upon.

What gives the Bar the entitlement to withhold such information and expect the client to sign up to an ever increasing fee retainer dependent upon how long the case lasts. If the barrister does not know what the likely costs are to be, what hope has the lay client to make such an evaluation of the potential bill when involving counsel. It is also argued that advertising fee rates would inevitably lead to a lowest fee competition and a lowering of standards in consequence. However that would not be the case if at the same time the provision of qualitative information referred to previously was addressed at the same time.



Presently the Bar has the odds stacked entirely in its own favour in relation to fixing fee levels. Why should this be? Especially as instructing counsel should be akin to any other commercial engagement wherein the barrister should be expected to shoulder some of the risk and to 'win some and lose some' in terms of whether the fee agreed is at the right level in any particular case.

The reluctance of chambers generally to take this risk reflects the reality that the traditional chambers model reflects an increasingly outmoded vehicle for providing legal services at a reasonable cost. The structure of the barrister's fee reflects not only the resource and time commitment to the individual case, but also the not insignificant cost of the practitioner's overheads of renting or owning a city centre suite of offices, despite the fact that the individual practitioner in chambers has for years now worked between computer and court and accessed any legal research required via the internet. Activities wholly independent of being in a set of chambers.

As these recent reports show, however, unless change is mandated, the Profession is unlikely to effect the same by itself and, in this respect, the Bar Council and the Bar Standards Board are in advance of their membership.

Changes at Ashley Murray Chambers:

The BSB have confirmed that Ashley Murray Chambers is, amongst other innovations, one of the few chambers in the UK, which already has its specific fee ranges fully available on its website (see <http://www.ashleymurraychambers.co.uk/fees/>) as below.

In the light of the BSB survey, it is also the intention of Ashley Murray Chambers to make the existing accessibility to the detail on the website of its complaints policy more obvious. Furthermore, there is to be a feedback form provided on the website to enable solicitors and clients to directly provide suggestions for improvement and commentary about the legal services provided by counsel and Chambers.

Low Value Cases:

But having reviewed its own pricing policy, Ashley Murray Chambers also considers this is not enough and a further important improvement can be made in relation to pricing. In particular, it is apparent that the seniority of counsel involved and the fee range charged for his services reflects only the higher end complex /value divorce work he regularly practices in. Of course, this reflects the natural development by experience of any barrister's practice where a reputation for undertaking certain work is acquired. However, it also reveals what should be considered as an unfair obstacle to the less financially endowed client accessing the services of the most experienced practitioners at the Bar.

Why should a client whose divorce finance case involves more limited asset values and incomes not have the opportunity to engage the most experienced counsel, if available, at rates which reflect what that client could better afford. With this in mind, Ashley Murray Chambers will add to the fee ranges



already shown on its website a second Table of Fees for Low Value divorce financial remedy cases where the net assets involved are below £400,000 and the income of the parties is below £60,000 gross pa.

Ashley's Fee Ranges for *Low Value Cases* where the net asset values are £400,000 or less and the income of the parties does not exceed £60,000 pa gross:

***Subject to cases of exceptional complexity**
(Travel/overnight costs may be added to hearings outside the North West).

INSTRUCTION	FEE RANGES* & **
1. Conferences /Advice	Fixed Fee: £500 (plus vat)
2. First Appointment	Fixed Fee £500 (plus vat)
3. Questionnaire	Between £250 and £350 (plus vat)
4. Financial Dispute Resolution	Between £1,000 and £1,250 (plus vat)
5. Final Hearing/Appeal – one day	Between £1,750 and £2,250 (plus vat)
6. Appeal Skeleton (for Appeal Notice)	Between £500 and £750 (plus vat)

**The fees above are based upon the reasonable presentation of instructions and accompanying documentation to counsel (see [Ashley's Instructions Guide](#))

Ashley's Fee Ranges for *All Other Cases*:

***Subject to cases of exceptional complexity and/or asset value**
(Travel/overnight costs may be added to hearings outside the North West).

INSTRUCTION	FEE RANGES* & **
1. Pre Form E Conference	Fixed Fee: £700 (plus vat)
2. Conferences Post Form E	Between £850 and £1,750 (plus vat)
3. Written Advice (substantive)	Between £750 and £1,500 (plus vat)
4. Pre-Nuptial Agreements	Between £2,000 and £4,000 (plus vat)
5. First Appointment	Between £1,000 and £1,500 (plus vat)
6. Questionnaire	Between £500 and £750 (plus vat)
7. Financial Dispute Resolution	Between £2,000 and £3,500 (plus vat)
8. Offer Letters	Between £350 and £450 (plus vat)
9. Final Hearing/Appeal – one day	Between £3,000 and £4,500 (plus vat)
10. Final Hearing/Appeal over one day	Brief fee/ refresher to be negotiated (plus vat)
11. Appeal Skeleton (for Appeal Notice)	Between £1,000 and £2,000 (plus vat)

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Ashley welcomes any discussion with his solicitors over the appropriate fee level in any individual case and invites his solicitors, if it is not possible to provide him with sight of the papers for this purpose in advance. to supply him with a brief summary of the issues in a case, the amount of reading required and the value involved.