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2 September 2014

Dear Judge Asplin

### **The Legal Services Consumer Panel report on fee-charging McKenzie Friends**

I write to you in your capacity as chair of the judicial working group which I understand is tasked with considering the Legal Services Consumer Panel (the Panel) report on fee-charging McKenzie Friends.<sup>1</sup> The Legal Services Board (the LSB) welcomes your group's ability to offer invaluable insight into this issue, particularly given the implications not only for the efficient functioning of the courts, but also for vulnerable consumers seeking access to justice.

As you may know, although both bodies were established under the Legal Services Act 2007 (the LSA), the Panel is distinct from the LSB. The Panel represents the interests of consumers, and the LSB is required by the LSA to consider representations made to it by the Panel.

On this occasion the LSB is not the principal audience for much of the Panel's report, which directs several of its recommendations to the judiciary. We have nevertheless considered the report in full, and our response to the Panel is attached for your reference. The Panel's work is obviously greatly valued by the LSB, exploring in a clear and measured fashion, as it does, the increasingly significant issues around fee-charging McKenzie friends. In the main we welcome the report, albeit that we are somewhat cautious at the point about formally welcoming the suggestion that fee-charging McKenzie Friends should be recognised as a legitimate feature of the evolving legal services market.

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<sup>1</sup>[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/2014%2004%2017%20MKF\\_Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2014%2004%2017%20MKF_Final.pdf)

Another point that presents some difficulty for the LSB, and the reason for this letter, is one of the Panel's two recommendations to us. Recommendation eight in the report states that:

*"The LSB should review case law on the definition of the conduct of litigation and publish a document which seeks to clarify its meaning. Depending on the findings of this research, the Board should consider recommending to the Law Commission that the law in this area be reviewed."*

As you will see from my letter to the Panel, the LSB appreciates the rationale for this proposal, and agrees that more certainty on this point is desirable. However, as I am sure you agree, the interpretation of case law and statute is a matter for the courts. As the LSB does not have a statutory power to declare the meaning of legislation, nor to provide advice on how to do this, in our view this matter will ultimately be addressed by the courts.

I am aware that you have already spoken with representatives of the Panel and understand from them that a possible outcome of your working group will be the production of updated and formalised guidance issued to judges in the Civil Procedure Rules and Family Procedure Rules. As it appears there may be overlap between the Panel's recommendation to us and the work of your group, I would be grateful if your group would be prepared to give thought to the merits of the Panel's proposal.

If it would be helpful to you, I would be happy to discuss the LSB's response to the Panel's report, particularly the recommendation referred to above. To the extent that you are able, I would also be grateful to be kept informed of the progress of the working group.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Michael Pitt', with a stylized flourish at the end.

**Sir Michael Pitt**  
Chairman