



REGULATING BARRISTERS

## **Public and Licensed Access Review Report**

**March 2017**

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## Executive Summary

The Bar Standards Board (BSB) began a review of the Public and Licensed Access schemes in late 2015.

The Public and Licensed Access schemes allow lay clients to instruct barristers directly without first instructing a solicitor or other lawyer.

The **Public Access scheme** allows registered Public Access barristers to accept instructions directly from any **member of the public**. The **Licensed Access scheme** allows certain “**licensed**” **clients** to instruct any barrister directly.

In order for a barrister to accept instructions via Public Access, they must complete training specified by the BSB and be registered as a Public Access practitioner. Over 5,500 barristers in England and Wales are registered as Public Access practitioners. In order for a barrister to accept instructions via Licensed Access, the client must either hold a licence issued by the BSB, or be a member of a professional body specified in the Schedules to the BSB’s Licensed Access Recognition Regulations.

The purpose of the review was to assess how well the Public and Licensed Access schemes are working in the consumer interest, and consider whether any changes should be made to improve the consumer experience of using these schemes.

Overall, our review has found that the Public and Licensed Access schemes are an essential component of how barristers provide their services to the public. They perform a valuable role in promoting consumer choice by increasing the ways in which legal services can be accessed by the public.

Our review concludes that both schemes are operating well, and that Public Access barristers are providing a valuable service to their clients. However, our review has also identified a number of ways in which the Public Access scheme can be further improved in the public interest.

The review has been conducted in accordance with our risk-based approach to regulating the Bar. You can find out more about this approach on our website: <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-risk-based-approach/>. The review is one part of our wider work around the risk theme of providing an opportunity for those we regulate to improve how they meet consumer needs. It is our role as a risk-based regulator to draw attention to the areas where further improvement is recommended and to take steps, within our regulatory remit, to improve them. It is important, therefore, that these discussions about improvements are not taken out of context or viewed as the BSB criticising either of the schemes, or the barristers providing services via them. These schemes are an important part of the way in which barristers market themselves to the public, and they perform an important role in providing the public with access to the Bar.

The review involved gathering and analysing evidence and developing an understanding of the market in this area. Our evidence gathering consisted of:

- Commissioning, jointly with our oversight regulator the Legal Services Board, an independent research specialist (Pye Tait) to undertake supply-side research into the Public Access scheme (surveying and interviewing Public Access barristers);
- Commissioning the same specialist researcher to undertake additional demand-side research focusing on the client perspective;
- Conducting a monitoring exercise of barristers who were of less than three years' standing (practising experience) and registered to undertake Public Access work;
- Commissioning a specialist legal access charity (Law for Life) to review our existing Public Access Guidance for Lay Clients, test it with members of the public and amend as necessary;
- Jointly with other legal services regulators and the Legal Services Consumer Panel, commissioning another research organisation (Optimisa Research) to understand how consumers engage with client care letters, with a view to improving their effectiveness;
- Undertaking two interviews with consumer organisations to help ensure that we were adequately considering the consumer perspective as well as that of the profession; and

- Conducting surveys on Licensed Access for both barristers and clients who have used the scheme.

We have already published the findings from several of the research activities listed above. The purpose of this report is to bring all of the evidence that we have gathered as part of our wider review together into one place. This will enable us to make recommendations designed to address the areas identified for improvement.

Notwithstanding our recognition of the overall positive role performed by Public Access barristers, we identified three key issues in light of the evidence gathered. The three issues are:

1. There are barriers that are making some consumers unable or unwilling to access a Public Access provider;
2. Barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work; and
3. Some Public Access barristers may be providing a poor client service.

The recommendations in this report are designed to address these issues. The report also highlights where we will seek to address these issues as part of our response to the Competition and Market Authority's (CMA's) review of the legal services sector. Its report identified issues relating to (for example) transparency of fees and the existing means of seeking and reflecting on client feedback.<sup>1</sup> The BSB will be working with the other frontline legal regulators to publish a detailed collective response to the CMA's recommendations. We will also be publishing an action plan of how we will be taking its recommendations forward individually.<sup>2</sup> It should be noted that the three key issues identified above are only relevant to the review of Public Access, not Licensed Access. The evidence showed that there appeared to be fewer issues with the Licensed Access scheme, and so a decision was made to

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<sup>1</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

<sup>2</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 19

consider the two schemes separately. Accordingly, separate recommendations have been made for Public and Licensed Access.

As a result of this review, some of the key recommendations being made are that:

- The BSB reviews its Public Access Guidance for Barristers, Clerks and Lay Clients and Model Client Care Letters, amending as necessary. This should draw on best practice in providing clarity and transparency on fees, and managing clients' expectations;
- The BSB explores whether to make provision of the guidance to lay clients mandatory for barristers. This could reduce the amount of information which needs to be included in client care letters;
- The BSB publishes standalone Guidance on Conducting Litigation. This would improve barristers' and clients' understanding of what is meant by the term;
- The BSB encourages Public Access clerks and administrators to attend relevant training courses as a matter of good practice, and explores how best to promote the training which is available (in a way which is consistent with our regulatory role);
- The BSB undertakes further assessment of how well the current Public Access training course meets the required outcomes, and how well the training is being delivered in the areas which barristers have identified for improvement; and
- The BSB amends the Public Access Rules, and Licensed Access Rules and Recognition Regulations, to be in line with the more outcomes-focused manner of the rest of the BSB Handbook.

For the full list of recommendations which have been made for both the Public and Licensed Access schemes, please see the annex to the report.

## Introduction

1. The Bar Standards Board (BSB) was established in January 2006 as a result of the Bar Council separating its regulatory and representative functions. The BSB is responsible for establishing and implementing a range of regulatory measures to ensure that standards at the Bar are maintained and the interests of consumers are understood, protected and promoted. The BSB regulates over 15,000 barristers in England and Wales.
2. The Public and Licensed Access schemes allow lay clients to instruct barristers directly without first instructing a solicitor or other lawyer. In order for a barrister to accept instructions via Public Access, they must complete training specified by the BSB and be registered as a Public Access practitioner. Over 5,500 barristers in England and Wales are registered as Public Access practitioners. In order for a barrister to accept instructions via Licensed Access, the client must either hold a licence issued by the BSB, or be a member of a professional body specified in the Schedules to the BSB's Licensed Access Recognition Regulations.<sup>3</sup>
3. In October 2013, a number of amendments were made to the BSB's Public Access Rules. Most significantly, barristers who were of less than three years' practising experience were permitted to undertake Public Access work for the first time. In October 2013, changes were also made to the Public Access training course which raised the minimum standards that training providers must meet, and included a requirement for participant competency to be assessed against outcomes. Barristers who had taken the existing course needed to complete additional training by November 2015 if they wished to continue to undertake Public Access work.
4. Following the November 2015 deadline, the BSB began a review of the Public and Licensed Access schemes.

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<sup>3</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>

## **Objectives of the Project**

5. The objectives of the Public and Licensed Access review are to:
  - a) Assess how well the Public and Licensed Access schemes are working in the consumer interest, and consider whether any changes should be made to improve the consumer experience of using these schemes;
  - b) Assess how well the Public Access Rules have been working since the changes in October 2013, and determine what changes may be needed;
  - c) Assess the utility of the BSB's Public Access Guidance for Lay Clients, Barristers and Clerks and Public Access Model Client Care Letters, and consider whether they need to be adjusted or amended so that all parties find them clear and effective;
  - d) Assess how well the new Public Access training regime prepares barristers for Public Access work and what, if anything, should be added or removed from the training course so that all Public Access barristers are well prepared to undertake Public Access work; and
  - e) Analyse the key themes that have emerged from the review of the Public and Licensed Access schemes, and identify areas of risk on which to focus.
6. This report outlines the progress which has been made towards achieving these objectives, and provides recommendations as to how this work should be progressed further.

## **Background**

7. In October 2013 a number of amendments were made to the Public Access Rules. Most significantly, barristers who were of less than three years'

practising experience were permitted to undertake Public Access work for the first time. This was subject to completing training specified by the BSB, having access to a Public Access 'qualified person' who is readily available to provide guidance, logging Public Access work and seeking feedback from Public Access clients. The rules were also amended to enable Public Access barristers to be instructed by lay clients who would be eligible for legal aid, provided the barrister ensures the client is able to make an informed decision about whether to apply for legal aid, or continue with Public Access. A barrister cannot accept instructions via Public Access when the client is in receipt of legal aid.

8. In October 2013, changes were also made to the Public Access training course which raised the minimum standards that training providers must meet, and included a requirement for participant competency to be assessed against outcomes. Barristers who had taken the existing course needed to complete additional training by November 2015 if they wished to continue to undertake Public Access work.
9. In January 2014, the BSB launched a revised Handbook and Code of Conduct, which includes the Public and Licensed Access Rules.<sup>4</sup> However, the rules were not revised as part of this process, and so remain more prescriptive compared to the rest of the BSB Handbook, which is drafted in a more outcomes-focused manner.
10. The BSB then began a review of the Public and Licensed Access schemes in late 2015. The key driver for the review was the fact that the Public and Licensed Access Rules had not been revised prior to the launch of the BSB Handbook in January 2014, and might not reflect the BSB's current approach of embedding the consumer perspective in all aspects of our work. Our Strategic Plan for 2016 – 19, for example, commits to building a deeper dialogue with consumers.<sup>5</sup> It was therefore timely to assess how well the

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<sup>4</sup> [https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf), pages 79-83

<sup>5</sup> [https://www.barstandardsboard.org.uk/media/1746768/bsb\\_strategic\\_plan\\_2016-19.pdf](https://www.barstandardsboard.org.uk/media/1746768/bsb_strategic_plan_2016-19.pdf), page 10

Public and Licensed Access schemes were working in the consumer interest, and consider whether any changes should be made to improve the consumer experience of using these schemes. In this regard, it was important that our Public Access Guidance for Lay Clients, Barristers and Clerks and Public Access Model Client Care Letters were included as part of the review.

11. By late 2015, it had also been two years since the changes set out above were made to the Public Access Rules and training course. It was therefore timely to assess how well they have been working, and determine what, if any, changes may be needed.
12. In addition to committing to embed the consumer perspective in all aspects of our work, the BSB has also adopted a risk-based approach to regulating the Bar, which means that we focus our resources where they generate the most value for consumers and the wider public. This helps to ensure that our regulation is proportionate and targeted. It was therefore important to analyse the key themes that emerged from the review of the Public and Licensed Access schemes, and identify areas of risk on which to focus. These key areas are reflected in the recommendations as to how the work on Public and Licensed Access should be progressed further.

### **Our Policy Development Framework**

13. The policy development framework is a tool to undertake policy analysis in a more systematic and consistent way throughout the BSB. In devising the framework, the BSB drew on good practice in policy analysis, using components from various models to develop a process for the BSB. It is designed to offer a method of policy analysis that is systematic but flexible. It is one way in which we can draw together a number of different strands of work we undertake. It gives an “end to end” of policy analysis, including the full life cycle from identification of a possible problem to consideration of whether an intervention has worked in practice. The framework has four main

stages: problem definition, developing options, implementation and evaluation.

14. In undertaking the Public and Licensed Access review, the BSB followed the policy development framework by “defining the problem” before progressing to the “developing options” stage. This ensured that the BSB did not start developing solutions prior to completing a systematic and comprehensive problem identification process.

### **Research and Evidence Collection**

15. The research and evidence gathering we conducted was part of the “problem definition” stage of the policy development framework. We undertook research to provide an evidence base which would help to achieve the objectives of the project.

### ***Pye Tait Consulting – Research into the Public Access Scheme (Supply Side)***

16. Pye Tait was commissioned jointly by the BSB and its oversight regulator, the Legal Services Board (LSB), to conduct research into the Public Access scheme by surveying and interviewing Public Access barristers. The purpose of this research was to develop a detailed picture of the current provision of legal services via Public Access, and to understand the perceptions of barristers about the operation of the current regulatory arrangements. The research was particularly focused on how barristers perceived the impact of the 2013 reforms on consumers and barristers.
17. This research was carried out entirely with barristers rather than clients. A separate piece of research was conducted with a focus on client perspectives, which is discussed below.
18. The research used mixed methodology, combining primary and secondary research and gathering quantitative and qualitative data. The data was

gathered through a questionnaire for Public Access barristers administered via telephone and an online survey. The survey was made available to all Public Access barristers – 5,695 were registered for Public Access at the time. In order to achieve robust and reliable survey results, a minimum sample of 360 was required. 404 barristers responded to the survey. The profile of the respondents was also broadly representative of the Public Access barrister population, based on the data for both gender and seniority (junior and Queen’s Counsel).

19. To supplement the quantitative survey, 30 in-depth qualitative telephone interviews were conducted with a sample of the respondents. The responses in these interviews were analysed and combined with the quantitative data to produce a report, which has since been published on the BSB and LSB websites.<sup>6</sup>
  
20. The main findings of the research were as follows:
  - a) Just over half of the barristers registered on the Public Access scheme surveyed had undertaken up to five cases in the past year. While a relatively small proportion of barristers’ overall caseload, it has increased markedly over the past three years. Public Access is most commonly used in family, chancery, employment, commercial and general common law;
  
  - b) Many barristers commented that dealing directly with lay clients was unfamiliar territory and they felt that clients had unrealistic expectations of the scheme and the role of the barrister. The misconceptions and expectations often prompted “excessive” correspondence with the client from the perspective of barristers, which had an impact on the profitability of the case and added an administrative burden for barristers. However, the report states that “those with more experience

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<sup>6</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf)

of the scheme are inclined to set out 'ground rules' at the outset, enabling them to manage client expectations"<sup>7</sup>;

- c) Many barristers found that adapting their approach to charging fees for Public Access clients created a challenge. They were uncertain about how to charge fees to the lay client and some barristers found that they ended up undercharging for their work as a result. The respondents also generally appeared to lack an understanding of market prices, or a sense of a need to charge competitive prices;
- d) Respondents with the most experience of Public Access work were more inclined to rate the existing regulatory framework as highly effective in protecting consumers. However, respondents generally considered the existing framework to be broadly effective in protecting consumers. It does not always lead to cost savings for the client and some clients are not considered suitable for Public Access because they are unable to manage the administrative function (particularly litigation) that solicitors would typically manage. For this reason, the scheme could perhaps be made even more effective in increasing the accessibility of legal services and broadening choice for consumers. However, the volume of Public Access work is expected to increase over the next few years as the public becomes increasingly aware of the scheme. There may also be further cuts or restrictions made to the legal aid scheme which reduce the number of eligible clients;
- e) The most critical change respondents think is needed is greater clarity within the BSB Handbook, Public Access Guidance and the training courses, notably tightening language to clarify understanding of the regulations, and clarifying how Public Access cases differ between areas of law and types of client. Some also suggested that case

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<sup>7</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 40

studies in the training courses would be useful, as well as additional training that is specific to areas of practice;

- f) The report states that “In particular it seems that there can be scope for confusion about what is classed as conducting litigation. For example a proportion of respondents who said that they were not authorised to conduct litigation, stated within the survey that they do in fact undertake litigation for some of their public access cases. It is unclear why this is the case, however it appears likely from the evidence that this is a mix of barristers assisting clients who are acting as litigants in person, in addition to some confusion over which activities fall within the reserved legal activity of litigation. Whilst this warrants further investigation, it appears from qualitative evidence that what these respondents describe does not in fact constitute the reserved activity of litigation under the Legal Services Act”<sup>8</sup>;
- g) Respondents also suggested more information should be provided on setting and managing client expectations. Equally, barristers and clerks would welcome additional guidance to understand how to manage the administrative aspects of Public Access work. Training for clerks and administrators in Public Access was suggested by many respondents; and
- h) Key barriers for consumers include lack of awareness of the scheme and the services that barristers are able to provide. Some respondents said that there is a need for a national initiative to raise awareness of the Public Access scheme.

### ***Pye Tait Consulting – Research with Public Access Clients (Demand Side)***

21. Following the research described above, the BSB commissioned Pye Tait to undertake some additional research focusing on the client perspective. The

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<sup>8</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 9

purpose was to build a qualitative picture of the experiences of clients when accessing Public Access services from barristers, and to gather clients' thoughts on any changes that could be made to improve their experience. We particularly wanted to know about how consumers accessed these services, any perceived problems with the current approach taken by barristers and to consider the utility of our Public Access Guidance for Lay Clients.<sup>9</sup>

22. The research methodology consisted of interviewing a sample of Public Access clients who had made complaints to the Legal Ombudsman (LeO) about their Public Access experience. Given the main purpose of the research was to understand the nature of any perceived problems with Public Access, the focus was on Public Access clients who had made a complaint rather than seeking a representative sample. It would also be very difficult to obtain a representative sample of Public Access clients, since details of such individuals are not readily available to the public or the BSB.
23. LeO provided the BSB with information about Public Access complainants. There were 88 consumers who had made a complaint about a Public Access barrister in the last two years and who consented to be contacted for this research. Pye Tait contacted all 88 complainants by letter and e-mail inviting them to take part in a telephone interview. A total of 13 participants were interviewed by telephone.
24. The main findings must be treated with caution and as indicative only as there were only 13 interviewees and all of them had made a complaint against a Public Access barrister. The information gathered from this research is therefore unlikely to be representative, but provides some interesting insights nonetheless.
25. The main issues identified by the complainants related to poor communication and timeliness, and work not being completed in accordance with instructions.

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[https://www.barstandardsboard.org.uk/media/1666529/3\\_the\\_public\\_access\\_scheme\\_guidance\\_for\\_lay\\_clients.pdf](https://www.barstandardsboard.org.uk/media/1666529/3_the_public_access_scheme_guidance_for_lay_clients.pdf)

Most respondents found their Public Access barrister by searching online. Some found a barrister via a third party referral service, but found that there was a risk of being put in contact with barristers who were not specialists in the required area of law.

26. The majority of respondents paid a fixed fee at the point of instruction and prior to any work being undertaken. In some cases the work then turned out to be unsuitable for Public Access.
27. A number of respondents would have preferred to meet their barrister face-to-face, which was not always possible. It was also suggested that it should be obligatory for the barrister to have at least one personal meeting with the client at the start of each case.
28. There were few respondents who were aware of our Public Access Guidance for Lay Clients. It was suggested by one respondent that barristers should be required to provide a copy to clients. There was a strong preference for guidance to use plain English so that it would be accessible to all potential lay clients. Respondents also emphasised the importance of having a tailored information pack for clients. Clients would like the onus to be on Public Access barristers to provide information or an FAQ document bespoke to their case – this could include a checklist of actions for the client and an explanation of important terminology. It was suggested that this sort of information might reduce the need for frequent communication with the barrister, and effectively distinguish between the roles and responsibilities of the barrister and the client in the case.
29. Clients did not understand whether the fees charged are “reasonable” and it appears from the earlier research that this is a problem on the barristers’ side as well. Although many fixed fee arrangements were agreed, some Public Access barristers asked clients for more money if the fixed fee was later deemed to not cover the work; for example, if correspondence became excessive.

30. Very few respondents identified positive aspects of instructing a Public Access barrister, although this is not surprising given only complainants were interviewed. Those that did identify some positive aspects mostly cited the opportunity to save costs as the main benefit. This appears most likely to be an advantage when clients are genuinely able to fulfil the role traditionally undertaken by a solicitor. It would be useful to explore how this could be made clearer to potential clients.

### ***Public Access Monitoring Exercise***

31. Prior to October 2013, barristers who were of less than three years' standing were not permitted to undertake Public Access work. The position has now changed, but Rules C121.2 – .4 of the BSB Handbook state that “A barrister with less than three years' standing who has completed the necessary training must: maintain a log of public access cases they have dealt with, including any issues or problems which have arisen; seek appropriate feedback from their public access clients on the service provided; and make this log available, on request, to the Bar Standards Board for review.”<sup>10</sup>
32. In 2014 the BSB undertook a monitoring exercise of barristers who were of less than three years' standing and undertaking Public Access work, and asked them to provide their logs and client feedback for review. The results of the monitoring exercise suggested that requiring barristers who are of less than three years' standing to maintain a Public Access log and seek client feedback does not help them to prepare to manage Public Access work, or develop their Public Access practices.
33. Of those barristers who indicated that they had undertaken Public Access work, most provided a superficial log with little consideration of issues and problems which had arisen. It also appeared that most had produced the Public Access log in response to the BSB's request rather than maintaining it

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<sup>10</sup> [https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf), page 79

contemporaneously. In addition, few barristers provided feedback from Public Access clients and those who did only provided positive feedback.

34. The October 2015 Report on High Impact Supervision Returns also states “Of particular note was the fact that few chambers actively seek feedback from lay clients and a number felt that it would not be possible or appropriate to do so. Rule C121 of the BSB Handbook requires barristers with less than three years’ standing to seek appropriate feedback from their public access clients on the service provided, but few chambers referred to this in their return.”<sup>11</sup> The report does describe how a few chambers seek feedback from lay clients, and it would be beneficial to consider how chambers could apply these strategies more widely. Rather than requiring barristers who are of less than three years’ standing to maintain a Public Access log, it may be that there are more effective and proportionate means of seeking and reflecting on client feedback.

***Law for Life – Review of Public Access Guidance for Lay Clients and Testing with Members of the Public***

35. The BSB commissioned Law for Life to review the existing Public Access Guidance for Lay Clients, test it with some members of the public and amend as necessary.
36. The review highlighted that the existing guidance needed to be written in much clearer, simpler language for lay clients. The updated guidance asks the question “why use a barrister?” at the beginning and provides other, more general, information before providing information which is specific to Public Access. The current guidance perhaps assumes too much prior knowledge about what a barrister does and when consumers might want to use a barrister’s services.

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[https://www.barstandardsboard.org.uk/media/1707974/2015\\_10\\_supervision\\_report\\_high\\_impact\\_the\\_mes\\_comms.pdf](https://www.barstandardsboard.org.uk/media/1707974/2015_10_supervision_report_high_impact_the_mes_comms.pdf), page 19

37. The testing with clients also made us aware of particular areas where clients want more information and examples; for example, clients want to know what “reasonable” fees are. This is a difficult area for the BSB to address since we do not regulate fees, and cannot tell barristers what they should be charging for their work. However, the guidance updated by Law for Life tries to provide as much information as possible to make sure clients are aware of the options.
38. Law for Life also advised us that examples are very effective at increasing the reader’s understanding, and important when explaining a system that might otherwise seem quite daunting. Although some people dislike examples and law practitioners are often nervous of them, Law for Life say there is evidence from evaluations to show that even those who dislike examples have an increased understanding when they are included. The updated guidance has added some examples to help aid understanding.

### ***Optimisa Research – Qualitative Research Report into Client Care Letters***

39. In 2016, the BSB and other legal services regulators commissioned joint research with the Legal Services Consumer Panel (LSCP) to understand how consumers engage with client care letters with a view to improving their effectiveness. Optimisa undertook this research.<sup>12</sup> As their report states, “The need for this study was identified following growing recognition that the language used by legal services providers and the methods of communication used are a major barrier to individuals understanding and engaging with legal services. Client care letters were felt to be a key area of focus, given that they are usually the first written communication a consumer receives after taking up legal advice. While not in themselves a regulatory requirement, client care letters are often used to fulfil regulatory obligations such as providing written information about the complaints process. They are typically sent out soon

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<sup>12</sup> [https://www.barstandardsboard.org.uk/media/1794566/client\\_care\\_letters\\_research\\_report\\_-\\_final\\_021116.pdf](https://www.barstandardsboard.org.uk/media/1794566/client_care_letters_research_report_-_final_021116.pdf)

after a legal services provider is appointed, as a confirmation of the consumer's instructions."<sup>13</sup>

40. This qualitative study was conducted in August 2016 and involved a series of 4 mini groups, 20 face-to-face depth interviews, and 1 workshop which involved 2 concurrent mini groups. This fieldwork took place across a number of locations in England and Wales.
41. The key findings of the research were as follows:
  - a) Confirmation letters at the beginning of the legal process are welcomed;
  - b) There is strong recall of receiving communications at the beginning of the legal process, but mixed levels of engagement;
  - c) Client care letters are often perceived as difficult to read – this is particularly problematic for the most vulnerable consumers;
  - d) There appears to be a disconnect between the information provided and/or prioritised in client care letters and information that consumers are interested in;
  - e) Limited attention means that the first page is crucial to encouraging engagement, and that information can often be missed in lengthy documents; and
  - f) Greater consideration should be given as to whether additional support can be offered to more vulnerable consumers.
42. Key principles were also identified in order to encourage engagement with client care letters and the information provided within them. These are as follows:
  - a) Show a clear purpose – provide the purpose of the letter and the importance of reading it upfront;

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<sup>13</sup> [https://www.barstandardsboard.org.uk/media/1794566/client\\_care\\_letters\\_research\\_report\\_-\\_final\\_021116.pdf](https://www.barstandardsboard.org.uk/media/1794566/client_care_letters_research_report_-_final_021116.pdf), page 3

- b) Keep it concise – recognise that the ideal length is 1-2 pages. If this is not feasible, use short sentences, bullet points and headings to break the information up;
- c) Put it in plain English – avoid using legal terms, archaic or complex language. Minimise the use of vague and/or heavily caveated information;
- d) Prioritise information – focus on the information which is perceived to be most relevant to the consumer and ensure a logical flow;
- e) Personalise information – provide details on the consumer’s specific case; for example, their estimated costs and not general estimated costs. Tailor the letter so that irrelevant information is excluded. Use personal pronouns so it is clear you are talking to the individual;
- f) Make it easy to read – use line spacing and a large font size (minimum size 12). Use headings to make the letter easy to navigate and avoid dense paragraphs;
- g) Highlight key information – use visual tools such as bold text, headers, summary boxes, tables or diagrams, to make it easier for consumers to pick out key points; and
- h) Consider additional opportunities to engage consumers – while there should be a clear reference to the complaints procedure in the client care letter, consider whether more detailed coverage is better delivered in separate leaflets, or whether reminders could be sent later on in the legal process to ensure that this information has cut through.

### ***Interviews with Consumer Organisations***

43. We also undertook two interviews with consumer organisations to help ensure that we were adequately considering the consumer perspective as well as that of the profession.

#### *Interview 1*

44. The first interviewee commented that there are potentially benefits for consumers of the Public Access scheme, but there are too many barriers.

Cost was identified as one of the main barriers. The interviewee suggested that the BSB consider how to provide more information on fees, and what different fee levels will likely achieve in the context of different kinds of cases. This is difficult for the BSB to address as we do not regulate fees, but we may need to consider how we can improve the information available for consumers about fees. However, it is not possible for the BSB to provide “reasonable” values for fees, or say whether a barrister’s fees are good value for money in the context of different kinds of cases. We can only provide information on the ways in which barristers charge fees and/or require greater transparency from barristers in relation to fees.

45. Another barrier is that the threat of a barrister returning instructions is a deterrent to using the Public Access scheme for potential clients. Rule C123 of the BSB Handbook states that a barrister must stop working for the client if it becomes apparent that it would be in the best interests of the client for them to instruct a solicitor instead.<sup>14</sup> Our Guidance for Lay Clients explains this<sup>15</sup> and it is important information to provide so that clients are fully aware of the position, but it also appears to be creating a deterrent.
46. The interviewee also thought that barristers are often ill-equipped to deal with vulnerable clients, and this may be preventing the system from working as well as it should for consumers. The interviewee gave an example comparing solicitors and barristers and said that while solicitors will often need to deal with vulnerable clients, in general barristers are not as experienced in this area.
47. The interviewee also thought that barristers may seem intimidating and inaccessible to many consumers, particularly because many of them will only be familiar with barristers from television programmes, which often portray them as very aggressive. Any scheme or information that would allow the

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<sup>14</sup> [https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf), page 80

<sup>15</sup>

[https://www.barstandardsboard.org.uk/media/1666529/3\\_the\\_public\\_access\\_scheme\\_guidance\\_for\\_lay\\_clients.pdf](https://www.barstandardsboard.org.uk/media/1666529/3_the_public_access_scheme_guidance_for_lay_clients.pdf), page 7

public to better understand potential legal problems and what barristers do would be helpful. Furthermore, it is important to use accessible language with useful context in any information provided for consumers.

48. Finally, a point made by the first interviewee was that the strength of Public Access is for discrete pieces of work; for example, representation at a hearing. It does not work so well for longer, ongoing cases, although it is unlikely that many barristers would want to work on such cases via Public Access. This is due to the additional administrative tasks and communication with clients which can make such work more challenging and resource intensive for barristers.

### Interview 2

49. The second interview conducted followed the same topic guide as the first interview, but the interviewee usefully shared insights into both Public and Licensed Access. Much like the first interview, attention was drawn to the fact that Public and Licensed Access are well suited to discrete or unbundled work and allow clients to approach their case in a piecemeal way. That is, clients can do most of the work themselves as litigants in person, but can call on barristers as experts without being required to also instruct a solicitor or other professional client. For this reason, the interviewee is of the view that they are useful schemes.
50. In contrast to the first interviewee, the second interviewee thought that there was nothing currently preventing the system from working well for consumers, but commented that in progressing the work on Public and Licensed Access further, it would be important for the BSB to strike the right balance between protecting consumers, supporting barristers and over-regulation. There was a concern that the BSB might fall into the trap of creating a lot of additional regulation to protect consumers and support barristers, which may not be proportionate or necessary. The comments about supporting barristers related to the fact that barristers are often not used to dealing with clients directly, and may need support in this while they adjust. Furthermore, barristers are more

exposed to complaints, whether justified or not, when working via Public Access.

51. It was discussed that the Terms of Work for Licensed Access<sup>16</sup> need updating in line with the BSB Handbook, but the interviewee thought they generally functioned well for barristers. They could perhaps use plainer English, but Licensed Access clients are sophisticated, so this may not be necessary. In addition, the Licensed Access Recognition Regulations and the Schedules to them need updating. Overall, the view was that the Licensed Access scheme is working well and there is little evidence to support significant reform.
52. The interviewee emphasised that good communication is important both a) from the BSB and b) between the client and the barrister so that members of the public understand what their options are when it comes to accessing legal services. Any communications for consumers should avoid using too much legal jargon, which adds confusion and can be another deterrent from using the Public (and perhaps the Licensed) Access schemes. It was suggested that the BSB should take the role of communicating information about the scheme to consumers on behalf of barristers, since we cannot monitor in real time the extent to which all barristers are providing the necessary information to their clients. However, it was also discussed that it is important for the BSB not to overstep its role and promote barristers' services, which is the role of the Bar Council in its representative capacity.

### ***Licensed Access Surveys for Barristers and Clients***

53. The BSB conducted surveys on Licensed Access for both barristers and clients who have used the scheme. The purpose of the surveys was to improve our knowledge of how the Licensed Access scheme operates in practice.

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<sup>16</sup> [http://www.barcouncil.org.uk/media/90761/bsb\\_licensed\\_access\\_terms\\_of\\_work.pdf](http://www.barcouncil.org.uk/media/90761/bsb_licensed_access_terms_of_work.pdf)

54. The research was conducted using online surveys. The barristers' survey was sent to all currently self-employed or dual capacity barristers and was completed by 180 respondents. The clients' survey was sent to all clients who were directly authorised by the BSB to use the Licensed Access scheme. An email was also sent to barristers asking them to send the survey link on to any Licensed Access clients that had instructed them. In addition, the link was sent to the various professional bodies whose members may use the scheme by virtue of the Schedules to the BSB's Licensed Access Recognition Regulations. Some of these bodies circulated the link to their members. Ultimately we received responses from 70 clients who had used the Licensed Access scheme.
55. For both surveys, those responding were a self-selecting sample and are unlikely to be representative of all barristers and clients who have used the Licensed Access scheme. For the clients' survey, the findings are highly unlikely to be representative due to a high level of non-response and the fact that we could not notify all Licensed Access clients directly. In particular, those who are authorised by the BSB directly are likely to be over-represented in the sample, as we were able to email them the survey directly. Nonetheless, the findings from both surveys can be seen as indicative of the experiences of clients and barristers using the scheme, and help to provide information about the sorts of work involved and any issues that can arise.
56. The main findings from both the barristers' and clients' survey are that the Licensed Access scheme appears to be working well, and no significant issues with the way the scheme operates were identified. For example, the vast majority of barrister respondents (97.2%) stated that they had never had grounds to believe a Licensed Access client had either failed to comply with the terms of their licence, or the terms on which the work was undertaken. In addition, no respondents felt that their Licensed Access barrister had ever failed to comply with the Terms of Work.
57. It was suggested that there could be better awareness of the scheme so that more consumers are able to utilise it. Some respondents also thought that the

Licensed Access Terms of Work required some changes; for example, to make them more comprehensible to lay people, or update them in line with the BSB Handbook.

58. Through the process of contacting Licensed Access clients with the survey, it also came to light that the names of the some of the professional bodies listed in the Schedules to the Licensed Access Recognition Regulations need updating.
59. The only potentially significant issue which the surveys identified is that some barrister respondents stated they had conducted litigation for clients without specific authorisation to do so. This may be due to the difficulty in determining which tasks can be considered “conducting litigation” as laid out in the Legal Services Act 2007 (LSA)<sup>17</sup>, and what does not fall under this definition. It is difficult for the BSB to address this since it is defined in statute and not by us. However, the confusion about the definition of “conducting litigation” was also shown to be a problem in Pye Tait’s Public Access research (supply side), although their research concluded it was unlikely that the barristers they spoke to in depth were undertaking the reserved activity of litigation inadvertently. As part of the review, we therefore need to consider how we could improve barristers’ and clients’ understanding of “conducting litigation”.

## **Risks and Issues**

60. Once the evidence gathering stage had been completed, we progressed onto analysing the evidence collected. We identified key risks and issues and this was the final part of the “problem definition” stage of the policy development framework. This meant that we were in a position to progress to the “developing options” stage by making recommendations as to how the work on Public and Licensed Access should be progressed further.

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<sup>17</sup> <http://www.legislation.gov.uk/ukpga/2007/29/schedule/2>

61. Having gathered and reviewed the evidence above, it was then developed into risk tables to help us consider the evidence with a focus on risks and issues (in line with the BSB's risk-based approach to regulation). It should be noted that the risk tables only included the evidence in relation to Public Access and not Licensed Access. As the evidence above shows, there appear to be more issues with Public Access than Licensed Access, and so a decision was made to consider the two schemes separately.
62. The original tables aligned the issues identified for Public Access with the BSB's Risk Index. Some of these issues seemed to be key issues, while others appeared to be causes of, or factors contributing to, key issues. The tables went through various iterations determining what the causes, issues and impacts were. Ultimately this led to the identification of three key issues:
- a) There are barriers that are making some consumers unable or unwilling to access a Public Access provider;
  - b) Barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work; and
  - c) Some Public Access barristers may be providing a poor client service;
63. The final versions of these tables show the three key issues and their contributing factors, and sort the causes based on the strength and reliability of the evidence. The tables were used to steer the consideration of possible options, which are discussed in more detail below.
64. The causes of the three key issues were separated into a number of categories:
- a) Fees/cost;
  - b) Information/guidance;
  - c) Training/preparation;
  - d) Communications/access between the barrister and the client;
  - e) Client experience;
  - f) BSB Handbook rules/breaches; and
  - g) Other.

65. The causes for each key issue were presented according to these categories. In this way, we were able to see how the different categories affected each key issue and discuss possible options that could have an impact on all three key issues. The category of information/guidance, for example, had several causes contributing to each issue. If initiatives were targeted at the causes in this category, it could feasibly help to make improvements across all three issues.

***Key Issue 1: There are barriers that are making some consumers unable or unwilling to access a Public Access provider***

66. The essence of this key issue is that there are barriers preventing potential clients from engaging with the Public Access scheme. These barriers might make consumers unable or unwilling to engage with a barrister directly.

67. According to the research from Pye Tait, clients often do not understand how fees are calculated. We have also identified this as a possible example of poor practice from barristers, but it does create a barrier which prevents clients from using the scheme.

68. The information and guidance available also appears to be creating barriers for consumers. The BSB publishes Public Access Guidance for Lay Clients on its website, but according to the research by Law for Life and Pye Tait (demand side), many clients are unaware of the guidance. In addition, feedback from the demand side research suggests that the Public Access Guidance for Lay Clients is not clear, uses too much legal jargon and assumes too much prior knowledge. The same applies to the Public Access Model Client Care Letters available on the BSB website.<sup>18</sup> Barristers also commented in Pye Tait's supply side research that the model letters use too much legal jargon and that while they help barristers to fulfil their regulatory obligations, they are less helpful for clients. Furthermore, barristers were of

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<sup>18</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>

the view that a general lack of awareness of the Public Access scheme is the biggest barrier for clients.

69. Better information and guidance for clients could also help address client expectations, which contributes to this key issue. The evidence shows that clients have expectations about Public Access relating to cost, barristers' expertise and how simple the process is, and they can also expect to be able to access the barrister directly at all times. When these expectations cannot be met, it can create further barriers and make clients unwilling to use the scheme. It was also noted that chambers and clerking arrangements may create barriers to using the Public Access scheme; for example, their procedures may not be 'lay client friendly'. This can deter lay clients from engaging in Public Access.
70. Another cause of consumers being unable to access a Public Access barrister is the inability of potential clients to fulfil the functions traditionally handled by a solicitor, such as the conduct of litigation. This is not necessarily a significant concern, as barristers are not permitted to accept Public Access work if it would be in the client's best interests to instruct a solicitor. This would most likely be the case if a client was unable to manage the tasks a solicitor would normally undertake. However, it is still a barrier that should be noted. It is something that may change over time if more barristers become authorised to conduct litigation as part of their Public Access practice.
71. The cab-rank rule (Rule C29 in the BSB Handbook) obliges barristers to accept instructions except in particular circumstances, but does not apply to Public Access cases.<sup>19</sup> However, it is still a requirement that barristers do not "withhold [their] services on grounds that are inherently inconsistent with [their] role in upholding access to justice and the rule of law" (guidance to Rule C28 in the BSB Handbook).<sup>20</sup> It is important to consider whether not applying the cab-rank rule to Public Access cases creates a barrier to access.

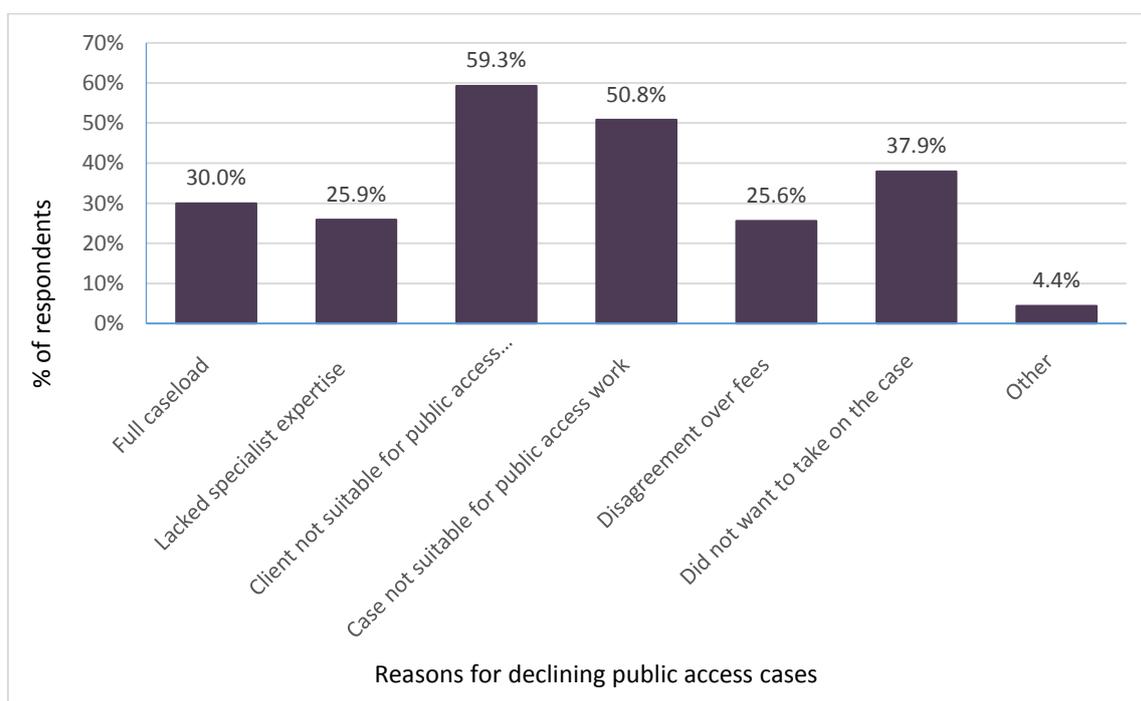
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<sup>19</sup> [https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf), page 44

<sup>20</sup> [https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf), page 43

It is also important to consider whether applying the cab-rank rule to Public Access cases would create a barrier to access, in that barristers may become less inclined to undertake Public Access work.

72. Pye Tait’s supply-side research found that “In the past 12 months, nearly two-thirds of respondents declined between 1 and 5 public accesses cases. Just over a fifth of respondents have never declined a public access case at all.”<sup>21</sup> The report continued by stating that: “The most prevalent reasons for declining cases are that either the client or the case is not suitable for public access work. Nearly 60% of respondents stated that clients were unsuited to the scheme, and just over 50% that the case was unsuitable. Nearly 40% of respondents did not want to take on the case. However it should be noted that this does not reveal the number of instances of barristers electing not to take on a case because they did not want to, for example this may have only happened once in the past 12 months.”<sup>22</sup> The reasons barristers gave for declining Public Access cases are shown in the table below:



<sup>21</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 30

<sup>22</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), pages 31-32

73. These findings were supplemented with qualitative feedback. This revealed that “risk assessment is an important influencing factor when barristers decide whether or not to accept public access instructions. As the vast majority of respondents are self-employed, the risk of the work going wrong in some way can be significant.”<sup>23</sup> Barristers feel more exposed to complaints and therefore disciplinary action, for example, when undertaking Public Access work. The report also states that “Another risk relates to getting paid for public access work; a number of barristers who participated in in-depth interviews said they have spent time and effort chasing up fees which would not have been the case if instructed by a professional client.”<sup>24</sup>
74. Finally, the report found that some barristers “do not think public access work is suitable for vulnerable clients, and these cases are often declined as part of the clerks’ initial screening. In this context barristers consider clients to be ‘vulnerable’ if they would be unable to conduct litigation, and manage the administrative burden. In a lot of cases, clients approach barristers via the scheme when they have already been turned away by solicitors, as their case is unlikely to succeed or lacks validity in other ways. Therefore barristers will reject the case on grounds of lack of suitability.”<sup>25</sup> There is therefore a risk that, in addition to imposing a regulatory requirement on barristers which is not imposed on solicitors, applying the cab-rank rule to Public Access cases would not lead to a meaningful improvement in access, as there would still be an exception for lack of suitability.
75. The evidence suggested that the number of potential cases declined by Public Access barristers is not disproportionate, and cases are largely declined for good reasons. In addition, there is evidence to suggest that applying the cab-rank rule to Public Access cases would create a barrier to access, in that barristers may become less inclined to undertake Public Access work. It could

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<sup>23</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 32

<sup>24</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 32

<sup>25</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 33

also lead to Public Access instructions being accepted inappropriately. However, as this issue has significant implications for access to justice, it will require further consideration as part of the review. For example, while the cab-rank rule does not apply to Public Access cases, it is still a requirement that barristers do not “withhold [their] services on grounds that are inherently inconsistent with [their] role in upholding access to justice and the rule of law”. It is therefore important to consider whether this prohibition is working effectively in the context of Public Access.

76. This issue regarding barriers to access aligns with the Risk Outlook theme about failure to meet consumer needs, and is consistent with several risks in the Risk Index:
- a) 5:1: Failure to meet consumer demand;
  - b) 5:3: Poor public perception of legal services;
  - c) 5:4: Affordability or value concerns; and
  - d) 5:5: Lack of accessible, quality market information to inform consumer choice.
77. Taking action with regard to this key issue will also support the regulatory objectives, in particular improving access to justice and protecting and promoting the public interest and the interests of consumers.

***Key Issue 2: Barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work***

78. Information and guidance was identified as a category of causes that cuts across all three key issues. The research showed that there is a lack of clarity with regard to what constitutes the conduct of litigation, and both barristers and clerks seem to be uncertain. For barristers to be better able to undertake Public Access work and to prevent them from conducting litigation without BSB authorisation, better guidance on what constitutes litigation was requested by many barristers in the surveys and interviews. It is difficult for the BSB to address this as we do not set the definition of “conducting

litigation”, but based on the evidence we should investigate if there are ways to provide clarity.

79. A lack of adequate training and preparation for barristers and clerks appeared to be the other factor contributing to this key issue. Pye Tait’s supply side research showed that many barristers are unsure what makes clients suitable or unsuitable for Public Access. Similarly, it seems that many barristers struggle to identify and manage vulnerable clients, and may have not always been prepared for this through the Public Access training. Through the surveys and interviews conducted by Pye Tait, barristers have also requested that the training contain more preparation for managing client expectations. This may be a way to make improvements against the other key issues too.
80. While the evidence could suggest that the current training does not adequately prepare barristers for some aspects of Public Access work, we intend to undertake further work on this. It was also suggested that clerks and administrators who deal with Public Access work should attend training to ensure they are well prepared, and that barristers have enough administrative support. The Bar Council offers a Public Access training course for clerks.
81. This key issue also aligns with several risks from the Risk Index. 3.6 particularly relates to the conduct of litigation, while the others apply more generally:
  - a) 1:1: Failure to provide a proper standard of service;
  - b) 1:2: Failure to give clear information about fees;
  - c) 1:3: Inadequate complaint handling;
  - d) 3:1: Inadequate training and preparation for practice;
  - e) 3:2: Lack of legal competence;
  - f) 3:3: Lack of cultural competence and people skills; and
  - g) 3:6: Authority to practise.
82. Taking action with regard to this key issue would be in the public and consumer interest. It will be important to ensure that any such steps would

also work towards helping barristers adhere to the professional principles. This would align any action with the regulatory objectives.

***Key Issue 3: Some Public Access barristers may be providing a poor client service***

83. Potential poor service from some barristers was identified as a key issue from the various sources of evidence and there appear to be several causes contributing to this.
84. Firstly, there was evidence from both barristers and clients in Pye Tait's research that there are concerns in relation to charging fees. Some barristers appear to be unsure about what fees to charge, and about the procedure with regard to charging for reading papers before accepting instructions. On the other side, clients have said that some barristers are not providing them a breakdown of the costs per activity, in which case they do not understand how their fees are calculated. Although the BSB does not regulate fees, it is still a regulatory concern if barristers are not making their fees clear to clients.
85. Regarding information and guidance, the client-focused research from both Pye Tait and Law for Life showed that consumers may be unaware of our Public Access Guidance for Lay Clients, and also unaware of what is expected of them as a Public Access client. This may be an example of poor service from barristers as they should be making it clear to the client what they need to do. It also appears that client expectations are not always being met or managed, and Pye Tait found that clients can be surprised at the amount of work they have to do themselves. A lack of communication between the barrister and the client was also found to be a major concern for clients. Some responsibility should fall on barristers to manage expectations. This will help clients to understand both what is required of them, and what sort of contact with the barrister they can expect.
86. There is also uncertainty about what constitutes litigation. The research shows that some barristers and clerks are uncertain, which could lead to

possible rule breaches with barristers unintentionally conducting litigation without BSB authorisation. The lack of additional information or guidance to help barristers and clerks understand what constitutes litigation may be contributing to this issue.

87. Finally, a lack of adequate training and preparation for barristers to understand and manage client expectations was identified as a potential cause of poor service in Pye Tait's supply side research. It was suggested that the training should contain more preparation for managing client expectations. Barristers also made suggestions for more advice and guidance on the practicalities of Public Access work to be included in the training: for example, the administrative requirements, lines of communication, dealing with complaints and managing time and documentation. Introducing a training course for Public Access administrators and clerks was also suggested, so that barristers have better administrative support. The Bar Council does in fact offer a Public Access training course for clerks.
88. This key issue is consistent with the Risk Index, particularly the first Risk Category: Client Service and Delivery. The following risks from the Risk Index are particularly relevant to the issues discussed above:
  - a) 1:1: Failure to provide a proper standard of service;
  - b) 1:2: Failure to give clear information about fees; and
  - c) 1.3: Inadequate complaint handling.
89. It is important that we address this key issue, as it is directly aligned to some of the regulatory objectives in the LSA, namely protecting and promoting the public interest, the interests of consumers and promoting and maintaining adherence to the professional principles. In order to protect the interests of the public and consumers, as well as ensure that Public Access barristers are acting in clients' best interests and providing proper standards of work, the BSB should consider what regulatory action we can take to address this key issue.

90. Furthermore, this key issue aligns with the first risk theme in the BSB’s Risk Outlook: “Failure to meet consumer needs”.<sup>26</sup> The BSB has already identified addressing the themes in the Risk Outlook as a priority, and addressing the risk of poor service by some Public Access barristers would directly support existing BSB priorities.

## **Options Development and Recommendations**

91. The next stage is to progress to the “developing options” stage of the policy development framework, and make recommendations as to how the work on Public and Licensed Access should be progressed further.

92. Separate recommendations will be made for the Public and for the Licensed Access schemes. The evidence shows that there appear to be more issues with Public Access than Licensed Access, and so a decision has been made to consider the two schemes separately.

93. It is crucial that for each option:

- a) There is sufficient evidence to take the option forward;
- b) The level of required regulatory intervention is proportionate and feasible; and
- c) At least one of the three key issues identified above is addressed (for options relating to Public rather than Licensed Access).

94. It is important that the level of required regulatory intervention is proportionate and feasible, as any disproportionate regulatory burden on practitioners could impact supply in the market. We will also seek to address the three key issues identified above as part of our response to the CMA’s review of the legal services sector. Its report identified issues relating to (for example) transparency of fees and the existing means of seeking and reflecting on client feedback.<sup>27</sup> The BSB will be working with the other frontline legal

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<sup>26</sup> [https://www.barstandardsboard.org.uk/media/1751659/bsb\\_risk\\_outlook.pdf](https://www.barstandardsboard.org.uk/media/1751659/bsb_risk_outlook.pdf), page 7

<sup>27</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

regulators to publish a detailed collective response to the CMA's recommendations. We will also be publishing an action plan of how we will be taking its recommendations forward individually.<sup>28</sup>

## ***Public Access – Recommended Options***

### **Cab-Rank Rule**

95. The evidence suggests that the number of potential cases declined by Public Access barristers is not disproportionate, and cases are largely declined for very good reasons. In addition, there is evidence to suggest that applying the cab-rank rule to Public Access cases would create a barrier to access, in that barristers may become less inclined to undertake Public Access work. However, as this issue has significant implications for access to justice, it requires further consideration. For example, it is important to consider whether the requirement that barristers do not “withhold [their] services on grounds that are inherently inconsistent with [their] role in upholding access to justice and the rule of law” is working effectively in the context of Public Access.
96. **It is therefore recommended that the BSB assesses from first principles whether the cab-rank rule should apply to Public Access cases, undertaking a full analysis against the regulatory objectives in the LSA. This should focus in particular on the regulatory objectives of improving access to justice, and protecting and promoting the public interest and the interests of consumers.**
97. **Key issue addressed:** there are barriers that are making some consumers unable or unwilling to access a Public Access provider.

### **Guidance for Barristers, Clerks and Lay Clients**

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<sup>28</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 19

98. The evidence shows that our Public Access Guidance for Barristers and Clerks<sup>29</sup> is not helping them to fulfil some of their key responsibilities; for example, assessing the suitability of Public Access clients, and identifying and representing vulnerable clients.
99. **It is therefore recommended that the BSB reviews its Public Access Guidance for Barristers and Clerks, amends as necessary and then tests the guidance to ensure it is fit for purpose. It should then be published and promoted through a variety of channels.**
100. The client-focused research from both Pye Tait and Law for Life also showed that consumers are often unaware of our Public Access Guidance for Lay Clients. In addition, feedback suggests that the guidance is not clear, uses too much legal jargon and assumes too much prior knowledge. The BSB commissioned Law for Life to review the existing Public Access Guidance for Lay Clients, test it with some members of the public and amend as necessary.
101. **It is therefore recommended that the BSB revisits the updated guidance in light of its now larger evidence-base and the evidence which has emerged from the CMA's report, amends as necessary and then tests the guidance to ensure it remains fit for purpose. It is also recommended that the BSB explores whether to make provision of the guidance to lay clients mandatory for barristers. This could usefully ensure that all clients have the same basic level of understanding about Public Access, reduce the amount of information which needs to be included in client care letters and reduce the need for frequent communication between barristers and clients.**
102. **Key issues addressed:** some Public Access barristers may be providing a poor client service, there are barriers that are making some consumers unable or unwilling to access a Public Access provider, and barristers and

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<sup>29</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>

clerks may not have enough support or may be inadequately prepared to manage Public Access work.

### Guidance on Conducting Litigation

103. The evidence shows that there is a lack of clarity about what constitutes litigation. Some barristers, clerks and clients seem uncertain, and the lack of additional information or guidance to help them understand what constitutes litigation may be contributing to this issue. While “conducting litigation” is defined in statute and not by the BSB, our Public Access Guidance for Barristers does detail the tasks which do, and do not, constitute conducting litigation in our view.<sup>30</sup>
104. **It is therefore recommended that the BSB reviews its position on which tasks constitute conducting litigation, drafts standalone Guidance on Conducting Litigation and then tests the guidance to ensure it is fit for purpose. It should then be tested and promoted through a variety of channels.**
105. **Key issues addressed:** some Public Access barristers may be providing a poor client service, and barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work.

### Model Client Care Letters

106. Optimisa’s research showed that there is regulatory value in client care letters, as confirmation letters at the beginning of the legal process are welcomed by clients. Pye Tait’s supply side research also stated that “Nearly 80% of respondents have used the Bar Standards Board Public Access model client care letter. This increases to 92% among respondents who earn more than 26% of their fee income from public access work, and just over 97%

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[https://www.barstandardsboard.org.uk/media/1725710/the\\_public\\_access\\_scheme\\_guidance\\_for\\_barristers\\_january\\_2016\\_.pdf](https://www.barstandardsboard.org.uk/media/1725710/the_public_access_scheme_guidance_for_barristers_january_2016_.pdf), pages 4-6

among respondents that have undertaken more than 21 public access cases in the past 12 months.”<sup>31</sup>

107. However, other feedback on the Public Access Model Client Care Letters available on the BSB website suggests that they are not clear, use too much legal jargon and assume too much prior knowledge. This is supported by Optimisa’s findings about client care letters in general, which include that client care letters are insufficiently concise and often perceived as difficult to read.
108. **It is therefore recommended that the BSB reviews its Public Access Model Client Care Letters in light of its evidence-base, amends as necessary and then tests the letters to ensure they are fit for purpose. Making provision of the guidance to lay clients mandatory for barristers could also reduce the amount of information which needs to be included in client care letters and therefore, reduce the length of the Public Access Model Client Care Letters.**
109. There is also evidence from Pye Tait’s research that there are issues in relation to charging fees. Clients have said that some barristers are not providing them a breakdown of the costs per activity, in which case they do not understand how the fees they are charged are calculated. With regard to transparency of fees, it can be hard for barristers to predict the time that will be spent on cases, and this can be more difficult with Public Access cases. It has therefore been suggested that client care letters should provide clarity and transparency on what different fee levels will likely achieve; for example, “it will cost £X for a certain amount of work, but if a particular situation arises that requires Y action then there will be additional costs of £Z.” This would help to reduce information asymmetries and also manage clients’ expectations. As the CMA’s report identified, barriers to access could also be reduced by requiring greater transparency in relation to price/services

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<sup>31</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 41

provided before clients engage with a barrister.<sup>32</sup> This could make it easier for clients to ‘shop around’ or find a potential provider within their budget. We will be exploring this further in the light of the evidence which has emerged from the CMA’s report, and working with the other frontline legal regulators to publish a detailed collective response to the CMA’s recommendations. We will also be publishing an action plan of how we will be taking its recommendations forward individually.<sup>33</sup>

110. With regard to the management of client expectations, Pye Tait also found that clients can be surprised at the amount of work they have to do themselves. A lack of communication between the barrister and the client was found to be a major concern for clients, whereas barristers often perceived communications from clients as unnecessary. However, feedback from the qualitative interviews conducted by Pye Tait also shows that “barristers have amended [the Public Access Model Client Care Letter] in a wide range of ways, to suit their own and their clients’ particular circumstances, as well as the area of law. For example some had added...more detail on the likely processes as the case progressed – to help manage client expectations.”<sup>34</sup>
111. **It is therefore also recommended that in reviewing its Public Access Model Client Care Letters, the BSB draws on the best practice above of providing clarity and transparency on fees, and managing clients’ expectations. The BSB should also draw on other best practice in this area. This should help clients to understand how the fees they are charged are calculated, what is required of them and what sort of contact with barristers they can expect. In light of the evidence which has emerged from the CMA’s report, as part of our response to its recommendations we will also be considering rules that would promote greater transparency in costs before clients have engaged a barrister.**

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<sup>32</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

<sup>33</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 19

<sup>34</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 41

112. **Key issues addressed:** some Public Access barristers may be providing a poor client service, and there are barriers that are making some consumers unable or unwilling to access a Public Access provider.

*Training for Clerks and Administrators*

113. As the evidence shows that some Public Access barristers may be providing a poor client service, and barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work, it is likely that barristers, clerks and administrators would benefit from some dedicated additional resource. Training for clerks and administrators in Public Access was suggested by many respondents to Pye Tait's supply side research. It was felt that this would be useful in terms of helping to manage client expectations, and ensuring barristers have enough administrative support. It has also been noted that chambers and clerking arrangements may create barriers to using the Public Access scheme, and training could help to rectify this.
114. **It is therefore recommended that the BSB encourages Public Access clerks and administrators to attend relevant training courses as a matter of good practice. We should also explore how best to promote the training which is available (in a way which is consistent with our regulatory role).**
115. **Key issues addressed:** some Public Access barristers may be providing a poor client service, and barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work.

## Public Access Rules

116. The Public Access Rules remain more prescriptive compared to the rest of the BSB Handbook, which is drafted in a more outcomes-focused manner. This may mean that the regulatory framework does not give sufficient emphasis to the desired regulatory outcome of a high standard of client service. Monitoring undertaken by the BSB also suggests that rather than requiring barristers who are of less than three years' standing to maintain a Public Access log, it may be that there are more effective and proportionate means of seeking and reflecting on client feedback. More generally, the CMA's report identified issues with the existing means of seeking and reflecting on client feedback too.<sup>35</sup> It may also be that there are more effective and outcomes-focused ways for newly qualified barristers to prepare to manage Public Access work and develop their Public Access practices. These could include completing appropriate continuing professional development activities relevant to their training requirements, and reflecting on the activities they have completed.
117. **It is therefore recommended that the BSB amends the Public Access Rules to be in line with the more outcomes-focused manner of the rest of the BSB Handbook, and explores whether to replace the requirement for barristers who are of less than three years' standing to maintain a Public Access log with a more effective and proportionate means of seeking and reflecting on client feedback. This should chime with the BSB's response to the CMA's report in relation to client feedback.**
118. **Key issues addressed:** some Public Access barristers may be providing a poor client service, and barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work.

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<sup>35</sup> <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

### Public Access Training

119. The required outcomes of the current Public Access training course are for barristers to:
- a) Know and understand the regulatory and legal requirements that apply to Public Access work;
  - b) Understand the circumstances when it would be in a client's best interests to refuse instructions or withdraw from a case;
  - c) Understand the relevant considerations for instructions from intermediaries;
  - d) Identify and address the needs of vulnerable clients so that they can act in the client's best interests;
  - e) Know and understand the skills required for managing cases including writing appropriate letters and keeping files; and
  - f) Interact appropriately and effectively with lay clients.
120. In Pye Tait's supply side research, it was suggested that the training should contain more preparation for managing client expectations. Barristers also made suggestions for more advice and guidance on the practicalities of Public Access work to be included in the training; for example, the administrative requirements, lines of communication, dealing with complaints and managing time and documentation. The report also shows that many barristers are unsure what makes clients suitable or unsuitable for Public Access. Similarly, it seems that barristers struggle to identify and manage vulnerable clients, and may have not always been prepared for this through the Public Access training.
121. In Pye Tait's supply side research, barristers also "stated that some of the content aimed at helping barristers to market their public access services could be improved by differentiating more clearly by types of client, and how their approach might be tailored accordingly."<sup>36</sup> In addition to including more

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<sup>36</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 60

case studies about different types of client, it would also be useful for the training to include more case studies about different areas of law, and how these differences might affect barristers' options regarding fee structures and charging. Furthermore, "some of the respondents thought that working through more case studies that demonstrated the difficulties that may be encountered in relation to the regulations...would be helpful."<sup>37</sup> There may be a need, for example, for the training to include some additional content covering the conduct of litigation, as the evidence has shown that some barristers have difficulty understanding this.

122. **It is therefore recommended that the BSB undertakes further assessment of how well the current Public Access training providers are meeting the required outcomes, and how well the providers are delivering training in the areas which barristers have identified for improvement. These assessments should be used to produce a revised set of required outcomes, which may not differ substantially from the current outcomes, but may lead to the training placing more emphasis on certain areas (including those which barristers have identified for improvement). It is also recommended that the revised outcomes align**
- a) with the BSB's Professional Statement, which describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice<sup>38</sup>, and b) with the BSB's Future Bar Training programme more widely. This seeks to make education and training for the Bar more consistent, innovative and flexible, while also removing unnecessary barriers.
123. **Key issues addressed:** some Public Access barristers may be providing a poor client service, and barristers and clerks may not have enough support or may be inadequately prepared to manage Public Access work.

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<sup>37</sup> [https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report\\_26.9.2016.pdf](https://www.barstandardsboard.org.uk/media/1788136/public-access-final-report_26.9.2016.pdf), page 60

<sup>38</sup> [https://www.barstandardsboard.org.uk/media/1787559/bsb\\_professional\\_statement\\_and\\_competences\\_2016.pdf](https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf)

### *Licensed Access – Recommended Options*

124. The main findings from both the barristers' and clients' survey are that the Licensed Access scheme is working well, and there are no significant issues with the way in which the scheme operates. The surveys also showed that there continues to be regulatory value in Licensed Access as a niche scheme which is distinct from Public Access. However, there do appear to be a number of ways in which the Licensed Access scheme could be made more outcomes-focused in line with the BSB's wider regulatory approach.
125. **It is therefore recommended that the Licensed Access scheme is retained largely in its current form, with only the following changes being made:**

#### *Licensed Access Rules and Recognition Regulations*

126. The Licensed Access Rules and Recognition Regulations remain more prescriptive compared to the rest of the BSB Handbook, which is drafted in a more outcomes-focused manner. This may mean that the regulatory framework does not give sufficient emphasis to the desired regulatory outcome of a high standard of client service.
127. **It is therefore recommended that the BSB amends the Licensed Access Rules and Recognition Regulations to be in line with the more outcomes-focused manner of the rest of the BSB Handbook. In order for a barrister to accept instructions via Licensed Access, the client must either hold a licence issued by the BSB, or be a member of a professional body specified in the Schedules to the Licensed Access Recognition Regulations. We will explore, amongst other things, whether the Schedules should be moved to guidance.**

### Limitations and Conditions

128. The Licensed Access Recognition Regulations state that if a person is a member of one of the professional bodies listed in the First Schedule, while they may use the scheme to instruct a barrister directly, they may not do so for the purpose of representation in various higher courts and the Employment Appeal Tribunal. However, this is a restriction which is difficult to continue to justify. Firstly, such persons will be sophisticated lay clients. Secondly, the Licensed Access Recognition Regulations already state that such persons may only instruct barristers directly in matters which fall generally within their professional expertise. If these matters happen to require representation in the higher courts, this should not be an issue as there is an existing safeguard in the BSB Handbook which states that barristers “must not accept instructions to act in a particular matter if: [they] are not competent to handle the particular matter or otherwise do not have enough experience to handle the matter” (Rule C21.8).<sup>39</sup>
129. **Members of the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations should, it is therefore recommended, be permitted to use the scheme to instruct a barrister for representation in the higher courts and the Employment Appeal Tribunal. This would be in keeping with amending the Licensed Access Recognition Regulations to reflect the more outcomes-focused manner of the rest of the BSB Handbook.**
130. Similarly, the Licensed Access Recognition Regulations also state that when issuing licences to clients so they may instruct barristers directly, the BSB may impose limitations and conditions relating to a) the matters the client can instruct a barrister for, and b) the courts and tribunals the client can instruct a barrister to appear in. This is also a restriction which which may be unnecessary and may lead to licence holders being required to submit (and pay for) applications to amend their licences.

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<sup>39</sup> [https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf), page 39

131. **It is therefore recommended that the BSB explores whether the whole system for individual approval of licences continues to be necessary and/or whether it could be made more proportionate.**

Scope of Practice Rules

132. The sophisticated nature of Licensed Access clients, and the low-risk scenarios in which they instruct barristers, has led to the suggestion that the BSB could amend its Scope of Practice Rules to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes). The justification for this would be that any client who would not be able to complain to LeO would be sufficiently sophisticated to instruct barristers directly. Those clients who *are* able to complain to LeO are as follows:

- a) Individuals;
- b) Businesses or enterprises that are micro-enterprises within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly businesses or enterprises with fewer than 10 employees and turnover or assets not exceeding €2 million);
- c) Charities with an annual income net of tax of less than £1 million;
- d) Clubs, associations or organisations, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million;
- e) Trustees of trusts with an asset value of less than £1 million; and
- f) Personal representatives or beneficiaries of the estates of persons who, before they died, had not referred the complaint to the Legal Ombudsman.

133. If the Scope of Practice Rules were amended in this way, there would be less reliance on the Public and Licensed Access schemes. This is because clients

who would not be able to complain to LeO would be permitted to instruct barristers directly without the requirement for either:

- a) The barrister to be registered to undertake Public Access work; or
- b) The client to hold a licence issued by the BSB; or
- c) The client to be a member of a professional body specified in the Schedules to the Licensed Access Recognition Regulations.

134. In these cases, other relevant rules in the BSB Handbook would still apply; for example, barristers would still be required to confirm acceptance of instructions in writing, including the terms and/or basis on which they will be acting (Rule C22).<sup>40</sup> They would also still be required to provide information to clients about their right to make a complaint, and the complaints procedure (Rules C99 – C102).<sup>41</sup> In the absence of solicitors or other professional clients also being instructed, record keeping requirements similar to those in the Public and Licensed Access Rules would also likely be imposed. However, in these low-risk scenarios of sophisticated clients instructing barristers directly, compliance with the Public and Licensed Access Rules as a whole would be deemed unnecessary.

135. **It is therefore recommended that the BSB explores whether in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to LeO to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes). However, if this is an amendment which should be made in principle, it may be best made as part of a wider review of the Scope of Practice Rules (rather than under the auspices of the Public and Licensed Access review).**

### Terms of Work

136. The Licensed Access Terms of Work are published by the Bar Council in their representative capacity. As Licensed Access clients are sophisticated, there is

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<sup>40</sup> [https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf), page 40

<sup>41</sup> [https://www.barstandardsboard.org.uk/media/1731225/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf), pages 70-71

little regulatory justification in including reference to the terms in the Licensed Access Rules and Recognition Regulations. From a regulatory standpoint, it would be better to simply require that Licensed Access is undertaken on agreed terms and then if barristers wish to continue using the Licensed Access Terms of Work, they can do so. The terms also need to be updated in line with the BSB Handbook. Furthermore, a barrister respondent to the Licensed Access survey stated that the terms “must first and foremost provide a workable, clear and commercial agreement between two professionals (e.g. an accountant or insolvency practitioner and a barrister). At the moment they do the different task of explaining why licensed access is compatible with professional rules.”

- 137. It is therefore recommended that the BSB removes reference to the Licensed Access Terms of Work from the Licensed Access Rules and Recognition Regulations and, via the protocol for ensuring regulatory independence, requests that the Bar Council update the terms.**

## Annex

### *Public Access – Recommended Options*

#### *Cab-Rank Rule*

The BSB should assess from first principles whether the cab-rank rule should apply to Public Access cases, undertaking a full analysis against the regulatory objectives in the Legal Services Act 2007. This should focus in particular on the regulatory objectives of improving access to justice, and protecting and promoting the public interest and the interests of consumers.

#### *Guidance for Barristers, Clerks and Lay Clients*

The BSB should review its Public Access Guidance for Barristers and Clerks, amend as necessary and then test the guidance to ensure it is fit for purpose. It should then be published and promoted through a variety of channels.

The BSB should also revisit the updated Public Access Guidance for Lay Clients in light of its now larger evidence-base and the evidence which has emerged from the Competition and Market Authority's report, amend as necessary and then test the guidance to ensure it remains fit for purpose. In addition, the BSB should explore whether to make provision of the guidance to lay clients mandatory for barristers. This could usefully ensure that all clients have the same basic level of understanding about Public Access, reduce the amount of information which needs to be included in client care letters and reduce the need for frequent communication between barristers and clients.

#### *Guidance on Conducting Litigation*

The BSB should review its position on which tasks constitute conducting litigation, draft standalone Guidance on Conducting Litigation and then test the guidance to ensure it is fit for purpose. It should then be tested and promoted through a variety of channels.

### Model Client Care Letters

The BSB should review its Public Access Model Client Care Letters in light of its evidence-base, amend as necessary and then test the letters to ensure they are fit for purpose. Making provision of the guidance to lay clients mandatory for barristers could also reduce the amount of information which needs to be included in client care letters and therefore, reduce the length of the Public Access Model Client Care Letters.

In reviewing its Public Access Model Client Care Letters, the BSB should also draw on the best practice it has identified in terms of providing clarity and transparency on fees, and managing clients' expectations. This should help clients to understand how the fees they are charged are calculated, what is required of them and what sort of contact with barristers they can expect. In light of the evidence which has emerged from the Competition and Market Authority's report, as part of our response to its recommendations we will also be considering rules that would promote greater transparency in costs before clients have engaged a barrister.

### Training for Clerks and Administrators

The BSB should encourage Public Access clerks and administrators to attend relevant training courses as a matter of good practice. We should also explore how best to promote the training which is available (in a way which is consistent with our regulatory role).

### Public Access Rules

The BSB should amend the Public Access Rules to be in line with the more outcomes-focused manner of the rest of the BSB Handbook, and explore whether to replace the requirement for barristers who are of less than three years' standing to maintain a Public Access log with a more effective and proportionate means of seeking and reflecting on client feedback. This should chime with the BSB's response to the Competition and Market Authority's report in relation to client feedback.

### Public Access Training

The BSB should undertake further assessment of how well the current Public Access training providers are meeting the required outcomes, and how well the providers are delivering training in the areas which barristers have identified for improvement.

These assessments should be used to produce a revised set of required outcomes, which may not differ substantially from the current outcomes, but may lead to the training placing more emphasis on certain areas (including those which barristers have identified for improvement). It is also recommended that the revised outcomes align a) with the BSB's Professional Statement, which describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice, and b) with the BSB's Future Bar Training programme more widely. This seeks to make education and training for the Bar more consistent, innovative and flexible, while also removing unnecessary barriers.

### ***Licensed Access – Recommended Options***

The Licensed Access scheme should be retained largely in its current form, with only the following changes being made:

#### Licensed Access Rules and Recognition Regulations

The BSB should amend the Licensed Access Rules and Recognition Regulations to be in line with the more outcomes-focused manner of the rest of the BSB Handbook. In order for a barrister to accept instructions via Licensed Access, the client must either hold a licence issued by the BSB, or be a member of a professional body specified in the Schedules to the Licensed Access Recognition Regulations. We will explore, amongst other things, whether the Schedules should be moved to guidance.

#### Limitations and Conditions

Members of the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations should be permitted to use the scheme to instruct a

barrister for representation in the higher courts and the Employment Appeal Tribunal. This would be in keeping with amending the Licensed Access Recognition Regulations to reflect the more outcomes-focused manner of the rest of the BSB Handbook.

The BSB should also explore whether the whole system for individual approval of licences continues to be necessary and/or whether it could be made more proportionate.

### Scope of Practice Rules

The BSB should explore whether in principle, the Scope of Practice Rules should be amended to allow any client who would not be able to complain to the Legal Ombudsman to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes). However, if this is an amendment which should be made in principle, it may be best made as part of a wider review of the Scope of Practice Rules (rather than under the auspices of the Public and Licensed Access review).

### Terms of Work

The BSB should remove reference to the Licensed Access Terms of Work from the Licensed Access Rules and Recognition Regulations and, via the protocol for ensuring regulatory independence, request that the Bar Council update the terms.