

# BAR STANDARDS BOARD

REGULATING BARRISTERS

## THE PUBLIC ACCESS SCHEME GUIDANCE FOR LAY CLIENTS

### Introduction

1. The purpose of this Guide is to explain how the public access scheme works and to show how members of the public (“lay clients”) can use it to instruct barristers directly.

### What is public access?

2. The public access scheme allows members of the public to instruct a barrister directly. In the past it was necessary for clients to use a solicitor or other third party in order to instruct a barrister.

### What are the advantages of the public access scheme?

3. The main advantage of the public access scheme is that it could potentially save you money, since you would be paying for a barrister only instead of a barrister and a solicitor. However, although the barrister would be able to deal with many aspects of the case, you may have to assist in some areas, including filing documents with the court, unless the barrister is also authorised to conduct litigation on your behalf. This is explained in more detail below but can be, in some cases, a relatively complex and technical process. In some cases, the barrister may recommend that you instruct a solicitor because of the complexity of the case or because you may need more assistance than the barrister alone can provide.

### Is my case suitable for public access?

4. Public access is available for all types of work that barristers can do, except for work that is funded by legal aid. It is worth considering if it would be better to have a solicitor to assist with your case in the first instance. Some cases may not be suitable for public access because of their emotional nature, because they are particularly complex or because the type of work that needs to be done in order to prepare the case would be difficult for you and may not be able to be done by a barrister. If you are not sure whether your case would be suitable for public access, you should contact an appropriate barrister (see below) or their clerk and seek an initial view. If the barrister considers that your case would benefit from the involvement of a solicitor, they will tell you so.
5. You may need to be able to deal with certain administrative tasks in order to help your case along, without the help of another legal professional. For example you may need to be able to gather together the papers and the evidence in support of your case that the barrister will need in order to do the work that you ask them to do. You may also need to file documents at court (that is submit documents such as expert

reports, case summaries or witness statements depending on the nature of the case) and correspond with the court and other parties (although the barrister will be able to draft letters and other legal documents on your behalf). If you are not sure if you will be able to assist with the various administrative tasks for whatever reason, it is worth considering if it would be better to have a solicitor assist you with your case.

6. Should your case involve litigation, you should establish whether your barrister is authorised to conduct litigation on your behalf (unlike solicitors, not all barristers are able to conduct litigation). If the barrister cannot do this for you, you will be a “litigant in person” and will be treated by the court and the other side for most purposes as though you were acting without any legal assistance. (Litigation is when a legal case is taken to and through a court or tribunal.) If your case goes to court you will be the person whose name appears in the court’s records, and all documents from the other parties and the court will be sent directly to you. However, you can sometimes ask or arrange for the court or tribunal and the other parties to copy documents to a third party other than your barrister. If your barrister has been authorised to conduct litigation then they will be able to undertake these tasks for you.
7. In considering whether your case is suitable for public access, the barrister is likely to take into account the nature and complexity of the case and (if the barrister cannot undertake litigation for you) your ability to deal with those aspects of it which would normally be taken care of by a solicitor. In making a decision the barrister will be guided by the requirements set out in the BSB Handbook. If they decide that your case is not suitable for public access, the rules require them to decline your instructions. If you wish, they may recommend a suitable solicitor for you to instruct.
8. It is also open to a barrister to accept instructions to read the papers and advise whether or not they are able to perform the work which you wish them to do. If your instructions are accepted for these limited purposes, it is important that you are both clear as to whether a charge is to be made. If preliminary work is to be carried out and a charge made for that work, you will be sent a client care letter. Copies of these letters are available on our website.

### **What if I qualify or may qualify for public funding?**

9. If you are eligible for public funding (also known as “legal aid”) and wish to take advantage of this funding, a barrister should advise you to approach a solicitor. This is because barristers cannot do legal aid work unless they have been instructed by a solicitor.
10. If you are not sure if you qualify for public funding and you would like to talk to someone in more detail about getting legal aid, you should contact a solicitor who does legal aid work. They will be able to tell you about the legal aid arrangements for a civil case eg when you are in a private dispute with another individual or organisation, and for a criminal case, eg where a crime may have been committed. It is unlikely that a barrister will be able to carry out the means-test required to establish whether you would qualify for public funding. You can find out more information on the Gov.UK website:

<https://www.gov.uk/check-legal-aid>

11. Whether or not you qualify for public funding, you might like to consider whether you have any insurance policies that might cover your legal fees, or if the fees may be paid by someone else, for example a trade union.
12. You may not wish to investigate whether you qualify for public funding, or if you qualify for legal aid you may prefer to instruct a barrister directly. In this case the barrister should ensure that you fully understand the implications of choosing to instruct them privately and the likely costs which you will incur by not accessing public funds. It is likely that the barrister will ask you to confirm in writing that you fully

understand the implications of your decision, for example the client care letter might contain a paragraph indicating that you have made an informed decision not to use legal aid.

### **Is a barrister obliged to accept public access work?**

13. A barrister may choose whether or not to accept a case that is suitable for public access work. However, a barrister may not refuse to accept instructions:
  - a. On the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief or pregnancy and maternity;
  - b. On the grounds that the nature of the case is objectionable to him or her or to any section of the public; or
  - c. On the grounds that your conduct, opinions or beliefs are unacceptable to him or her or to any section of the public.
14. If the barrister decides to accept your instructions, you will be sent a client care letter that, amongst other things, describes the work to be undertaken, sets out the terms and conditions, how much the work will cost and how to complain if something goes wrong.
15. Throughout the case, the barrister remains under an ongoing duty to consider whether a case remains suitable for public access, and they must refuse to continue to act on a public access basis if it is no longer suitable for them to do so.

### **How do I make use of the public access scheme?**

16. To use the scheme, you would have to instruct a barrister yourself. Further details of how to do this are given in this guidance.

### **The difference between the services offered by a barrister and a solicitor**

17. The historic difference between what a barrister does and what a solicitor does has become less obvious over the last few years. However, barristers specialise in providing expert legal advice, advocacy in court and the drafting of documents. Solicitors normally give advice to and draft documents for their clients or may instruct a barrister to provide this service. In a public access case you will need to perform these roles yourself.
18. Barristers are not able to provide some of the services that solicitors offer. For example, unless they have been specifically authorised to do so, they will not be able to conduct litigation and they are not allowed to handle client money. Your barrister will advise you if they consider that anything you want done is something which only a solicitor can provide.
19. The following are some examples of **work which a barrister is allowed to do**.
  - a. A barrister may appear on your behalf at court.
  - b. A barrister may give you legal advice.
  - c. A barrister may draft legal documents for you, such as a will or statement of claim.
  - d. A barrister may advise you on the formal steps which need to be taken in proceedings before a court or other organisation and draft formal documents for use in those proceedings.

- e. A barrister may draft and send letters for you. A barrister can assist you with drafting letters if your case goes to court but the letters will need to be sent out in your name.
  - f. If a witness statement from you is required in proceedings, a barrister may prepare that statement from what you tell them. A barrister may also help to prepare witness statements from another person based on the information which that person has provided.
  - g. Where a case requires an expert witness (for example, a surveyor who can provide evidence of a technical or professional nature), a barrister may advise you on the choice of a suitable expert and may draft a letter of instruction which you can then send to the expert as a letter from you on your own notepaper.
  - h. Barristers can negotiate on your behalf and can attend employment, police or investigative hearings where appropriate.
20. The following are examples of **work that a barrister may do, but only if they have been authorised to conduct litigation**.
- a. File proceedings on your behalf with the court or file other applications, or take other formal steps in court or other proceedings. (If the barrister has not been authorised to conduct litigation, you will have to send the documents to the court, although the barrister could help prepare them for you.)
  - b. Instruct an expert witness on your behalf.
21. A barrister **is not allowed to handle clients' money** (by comparison, solicitors can hold client money in the firm's trust account).

### **Does a barrister need special training to take public access work?**

22. Yes. Before a barrister can accept public access work they must satisfy number of conditions. Subject to limited exceptions, before a barrister is permitted to accept public access work they must have:
- a. a full practising certificate;
  - b. undertaken a "public access" training course approved by the Bar Standards Board (BSB) through which they will demonstrate that they have the necessary knowledge, understanding and skills to conduct such work; and
  - c. notified their regulator (the BSB) that they wish to offer public access services.

### **Instructing a public access barrister**

#### **How do I find a barrister?**

23. It is important to instruct a barrister who specialises in the appropriate area of law for your case. If you do not know who to instruct, there are a number of ways of finding the right barrister. The Bar Council has a directory of public access barristers on its website, at:

<http://www.barcouncil.org.uk/instructing-a-barrister/public-access/>

24. There are also legal directories which specialise in finding barristers; for example, the Bar Directory (which may be found via the Bar Council's website), Chambers & Partners Guide to the Legal Profession and the Legal 500. In addition, many sets of Chambers have their own web sites which contain information about the different barristers who work there and the type of work they do. A set of Chambers is a

practice where a group of independent self-employed barristers share premises and administrative services.

25. Alternatively, if you know of a set of barristers' Chambers which undertake your sort of case, you can telephone them and ask the Senior Clerk or Practice Manager to make a recommendation.

### **How do I instruct a barrister?**

26. Try to clarify in your own mind the nature of your problem and what it is that you want the barrister to do. Telephone the Senior Clerk or Practice Manager of the set of Chambers where the barrister works and tell them that you wish to instruct the barrister directly. They will tell you what to do next.
27. Alternatively, if the barrister works by themselves as a sole practitioner, ie is not a member of a set of Chambers, you should contact the barrister's place of work. You will have to explain that you wish to instruct the barrister directly and to explain the nature of the work which you wish the barrister to undertake for you. The barrister may want you to send you some further documents or alternatively may decide that the most appropriate option would be to meet and decide on the best way forward.

### **Proof of your identity**

28. In some circumstances, the barrister will be required by law to carry out certain identification procedures. These must be followed as soon as reasonably practicable after you have first made contact with the barrister and it is likely that this will happen after you make the initial contact described above. Whether these procedures apply and, if so, how they should be followed, need to be considered by the barrister when you first make contact.
29. Where the procedure applies, the barrister will require satisfactory evidence of your identity – that is, proof of your name, date of birth and current address. The type of evidence required will depend on the circumstances. For example:
  - a. If you are acting as an individual, you may be required to produce in person your current passport or other national identity card or a new form of driving licence (with a photograph) together with a recent utility bill, or bank or building society statement.
  - b. If you are acting on behalf of a company, you will need to produce a certified copy of the Certificate of Incorporation, the latest accounts filed at Companies House and evidence that you are authorised to act on behalf of the company.
30. To carry out the procedures properly, the barrister may well have to have a meeting with you. You will be told what to bring to that meeting. The barrister is required to take copies of the documents you bring and to retain those copies for 5 years.

### **How will I be charged?**

31. A barrister usually charges according to their level of experience, the complexity of the case and the length of time involved in dealing with it. It is important that the cost to you, and the stage at which the fee is payable, is agreed at the outset, and that the terms of the agreement are clear to both you and the barrister.
32. There are no formal scales of fees for barristers' work. The amount to be charged for any particular piece of work, and when the fee becomes payable, is a matter for negotiation between you, the barrister and their clerk. All public access barristers are independent self-employed practitioners, competing with each other. If you consider the fee proposed by one barrister to be too high, try another barrister.

33. Where the fee relates to a hearing, the barrister is normally entitled to the fee, regardless of whether or not the hearing goes ahead. If that is to be the case, the barrister should tell you at the outset. You may, if you wish, try to agree a different basis for payment of the fee in such a case.
34. In other cases (whether for a meeting or for a written advice), it may be possible to fix a fee in advance for the work. However, that will not be possible in every case. Where it is not possible, you should ask for an estimate. You may be able to agree with the barrister that there should be a “ceiling” on the fee charged for a particular piece of work.
35. If you agree a fee in advance of the work being done, then the barrister may require that fee to be paid before carrying out the work. Where a fee is not fixed in advance and the work involves the production of paperwork (for example, the drafting of a contract), the barrister may nevertheless require you to pay for the work after they have completed it and before releasing it to you. If that is to be the case, the barrister should tell you at the outset.
36. Conditional fee agreements (agreements under which a fee becomes payable only in the event of success in a case) are possible. However, it is unlikely that barristers will be willing or able to undertake public access work on a conditional fee basis, save in very rare cases. Again, this is matter of negotiation between you and the barrister.
37. The barrister is required to keep sufficient records to justify the fees that they are charging. You are entitled to ask for details to justify the fee that you are being charged.

#### **Can a barrister stop acting for me after they have accepted my instructions?**

38. Yes, but this will only happen in a small number of cases. There will be some rare occasions when the barrister has to stop acting for you. In public access cases, the barrister must stop acting for you if they consider that the case is no longer suitable for public access. The barrister may be able to assist if, as a consequence of them no longer continuing to act for you, you will or may experience difficulties in relation to an imminent hearing.
39. In public access cases, a barrister is also required to cease to act where they have formed the view that it is in your interests or the interests of justice that you instruct a solicitor or other professional person. In such cases:
  - a. Your barrister is under a continuing duty to consider whether your case remains a suitable case for public access. If they form the view that it is not, you will be advised of this fact. If you then instruct a solicitor or other professional person able to provide instructions to the barrister, they may continue to act for you. If you do not, your barrister must cease to act for you.
  - b. If you are a party to proceedings (ie you have brought a case against another person or a case has been brought against you) in which a hearing is imminent, and you are likely to have difficulty in finding a solicitor in time for the hearing, your barrister should provide you with such assistance as is proper to protect your position. Although your barrister may not continue to work for you on a public access basis, they may be able to assist you by, for example:
    - i. drafting letters for you to send, asking for an adjournment of the hearing;
    - ii. writing a letter to the court in support of that application, explaining that they have had to withdraw and, if appropriate, explaining the reasons for doing so; and
    - iii. assisting you to find a solicitor.

## **Can I instruct a barrister directly when I have already instructed solicitors?**

40. Yes, you may instruct a barrister directly even though you have already instructed solicitors. If you do so, the barrister will still have to consider whether they should accept your instructions. However, the fact that you have retained solicitors is not in itself a reason for refusing to accept your instructions; nor may the barrister contact your solicitors without your permission. However, there may be cases, eg where your case involves existing litigation, where a barrister will refuse to accept your instructions unless you give them permission to contact and liaise with your solicitors and you also give your solicitors the necessary permission to provide information to the barrister.

## **Confidentiality and compulsory disclosure of information**

41. Your barrister is under a strict professional duty to keep your affairs confidential. This legal professional privilege protects your communications with your barrister from disclosure. The only exception is that any lawyer, eg a barrister or a solicitor, may be required by law to disclose information to governmental or other regulatory authorities, and to do so without first obtaining your consent to such disclosure or telling you that they have made it.

## **Complaints**

41. If you have a complaint about your barrister, then in the first instance, you should try the complaints system maintained by your barrister or his or her Chambers. Information on how to do this should have been provided to you in the initial client care letter.
42. If you are not satisfied with the handling or outcome of your complaint by your barrister or his or her Chambers, then you can contact the Legal Ombudsman. The Legal Ombudsman is an independent organisation. It deals with complaints about the service provided by all types of lawyers in England and Wales. The Legal Ombudsman can decide whether or not the service you received from your barrister was satisfactory, and can:
- Award compensation for poor service;
  - Consider whether the fees paid, or have been charged, should be reduced; and
  - Decide whether you should receive an apology.
43. Any complaint to the Legal Ombudsman should be made within 6 months of receiving the final response to your complaint from your barrister or his/her Chambers (provided the response specifically notifies you of your right to complain to the Ombudsman and of the six month time limit). A complaint to the Legal Ombudsman must also not be made more than 6 years after the problems arising and not more than 3 years after you become aware of the problem.
44. The Legal Ombudsman will assess your complaint and determine whether there are any concerns about professional misconduct (professional misconduct is when a barrister has not kept to the Code of Conduct for barristers, and, as a result, disciplinary action might need to be taken). If your complaint relates to potential professional misconduct, the Legal Ombudsman will refer the relevant parts of your complaint to the Bar Standards Board for consideration. If your complaint needs to be referred you do not need to do anything. The Legal Ombudsman will let you know if any aspect of your complaint has been referred and the Bar Standards Board will also contact you to confirm this.

45. The Legal Ombudsman can give you more detailed information on how to make a complaint. You can contact the Legal Ombudsman:

**By phone:** 0300 555 0333

**By email:** [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

**Through their website:** [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

**By post:** PO Box 6806, Wolverhampton, WV1 9WJ

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