

CURRENT GUIDANCE

Public Access Model Client Care Letter to Intermediary

[Insert geographical address, telephone, fax and email details]

Dear **XX**

Thank you for your [letter of ...[insert date]] [phone call on ... [insert date]]. I have enclosed a copy of the Bar Standard Board's (BSB) guidance for lay clients, which explains how the Public Access scheme works.

I would be pleased to accept instructions from you on the terms set out in this letter and attachment. It is important that you understand my full terms as they will form a contract between us. It is also important that you understand that I cannot do legal aid work unless I have been instructed by a solicitor. If you wish to discuss legal aid further before making a decision about whether to instruct me, please let me know.

I thought it would be helpful to set out the arrangement for undertaking this work, the work I will carry out and the fees that I will charge for this work.

The arrangement

My contract under this arrangement will be with you. You and not Y [client's name] are responsible for paying my fees for this work. I will receive my instructions from and through you, but the client I am instructed for is Y. You are acting as agent for Y – you are not acting as my agent (an agent is somebody who acts on another's behalf).

In carrying out the work under these instructions, I owe a professional duty to Y. Furthermore, the benefits that this contract gives to Y may be enforced by Y under the Contracts (Rights of Third Parties) Act 1999.

The work I will carry out

The work you are instructing me to carry out is **XX**.

If subsequent work is needed on this matter, there will be another letter of agreement between us. Because I carry out all my work personally and cannot predict what other professional responsibilities I may have in the future, I cannot at this stage confirm that I will be able to accept instructions for all subsequent work that may be required for your case.

I undertake to perform these services by **XX**.

My fees for this work

[**Option 1:** My fee for the advisory and drafting work described in paragraph 3 will be a fixed fee of £**XX** plus VAT. You and I agree that I will not send to you the work you have instructed me to draft until you have paid the fee.]

[**Option 2:** My fee for accepting the instruction to appear as an advocate on the occasion described in paragraph 3 will be £**XX** plus VAT. You and I agree that I will not attend the hearing unless you have paid the fee in advance. If for any reason the case takes longer than one day, I will charge an extra fee of £**XX** per day plus VAT.]

[**Option 3:** At the moment, I do not know how much work will be involved in these instructions. As a result, I cannot quote you a fixed fee at this stage. I will therefore charge you on a time basis at £**XX** an hour plus VAT. I will not carry out work that will cost you more than £**XX** plus VAT without your permission. When I have finished the paperwork you have instructed me to draft, my clerk will tell you how much the fee is. You and I agree that I will not send you the work until you have paid the fee.]

If you are dissatisfied with the service you receive

If, for any reason, you and/or Y are unhappy with the service you receive my chambers has a complaints process that you may follow. Further details about what to do if you have a complaint are set out in my terms. I am required to comply with the Code of Conduct in the BSB Handbook, which is available on the BSB's website:

<https://www.barstandardsboard.org.uk/>

Please read this letter and my full terms carefully. If you agree with the proposed arrangement, and my terms, please sign the enclosed copy of this letter in the space provided in the attachment and return both the letter and attachment to me. If you do not understand any of my terms, you should ask me to clarify or explain them.

Right to cancel

Under certain circumstances, you have the right to cancel this contract within 14 days without giving any reason. You have the right to cancel if this contract is concluded:

- “Off-premises”. This means we have agreed what I will do by having a face-to-face discussion (which may have been with me or my clerk) in a place other than my chambers (this could have been at your home, workplace or at court); or
- “At a distance”. This means we have agreed what I will do for you by e-mail, post or a website, without a face-to-face discussion with me or my clerk.

If applicable, the cancellation period will expire after 14 days from the day on which the contract is agreed.

To exercise any right to cancel, you must inform me of your decision to cancel this contract by a clear statement (e.g. a letter sent by post, fax or e-mail to the contact details provided

on my letterhead). You may use the attached model cancellation form, but it is not obligatory.

To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

Effects of cancellation

If this contract is cancelled, I will reimburse to you all payments received from you.

I will make the reimbursement without undue delay, and not later than 14 days after the day on which I was informed about your decision to cancel this contract.

I will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.

If you requested me to begin the performance of services during the cancellation period, you shall pay me an amount which is in proportion to what has been performed until you have communicated to me your cancellation from this contract, in comparison with the full coverage of the contract.

I will send a copy of this letter to Y.

Yours sincerely

Attachment

My terms

1. I am the only person you are instructing, and I personally will do all the work needed under this arrangement. I am an independent self-employed barrister but am not employed by a firm of solicitors, although I practise with other barristers from a set of chambers. A set of chambers is a practice where a collection of independent self-employed barristers share premises and administrative services. I am regulated by the Bar Standards Board.
2. I have carefully considered the instructions and can confirm that I have sufficient experience and competence to undertake the work.
3. If for any reason I cannot carry out all the work you are instructing me to do, or if I want to suggest that another barrister (instead of me, or as well as me) carries out the work for you, my clerk or I may propose this and explain why I have made this suggestion. However, another barrister will not carry out work for you unless and until you have agreed to an arrangement and have instructed the other barrister. If you or Y feel that you would be happier with the services provided by an organisation (rather than an individual), you or Y need to instruct a firm of solicitors.
4. ***[NB: If the instructions are a brief for a specified day, add:]***
There may be times when my professional commitments clash. If I identify a possible clash of commitments and I am unable to work on your case I will do my best to:
 - (1) Warn you and Y as soon as possible and ask you how you would prefer to continue. As a result, it would be helpful if you would give me a telephone number on which I will always be able to contact you.
 - (2) Suggest the name of another barrister within my chambers (of a suitable

level of seniority and expertise), who is willing to accept this case under the same terms as this agreement. You and Y would then need to decide whether you want to instruct that barrister.

- (3) Help you and Y find a barrister from other chambers if there is not a suitable barrister within my chambers, or if you do not want my chambers to continue working on your case.
- (4) Discuss with you the costs of using another barrister.

The work I will carry out

5. The work you are instructing me to carry out is set out in my covering letter.
6. If subsequent work is needed on this matter, there will be another letter of agreement between us.

The range of work I can carry out

7. Barristers advise on the law, draft documents for clients to use and appear on behalf of their client before courts or other organisations. Barristers do not handle client money or **[if not authorised to conduct litigation*]** undertake the organisation or management of a case proceeding through a court.
8. Here are some examples of work I can carry out:
 - (1) I can draft letters on Y's behalf.
 - (2) I can appear on Y's behalf to argue their case at court.
 - (3) If a witness statement is needed from Y, I may draft it from what Y tells me. I may also help to finalise a witness statement from another person based on the information that person has provided.
 - (4) I can advise on the need for expert evidence and on the choice of a suitable expert and instruct an expert on Y's behalf. Expert evidence is evidence

about a professional, scientific or technical matter provided by an individual with expertise in that area.

- (5) **[if not authorised to conduct litigation*]** I can draft formal court documents on Y's behalf. However, I cannot serve court documents on other parties or file them at court on Y's behalf. Y will need to take responsibility for serving formal court documents on other parties and filing them at court. Serving court documents is the process by which papers relating to a case are put before the court or tribunal and the parties, e.g. individuals or organisations, involved in the case. This usually signals the start of formal proceedings.

[if authorised to conduct litigation*] I can draft formal court documents on Y's behalf, serve court documents on other parties and file them at court on Y's behalf. Serving court documents is the process by which papers relating to a case are put before the court or tribunal and the parties, e.g. individuals or organisations, involved in the case. This usually signals the start of formal proceedings.

- (6) **[if not authorised to conduct litigation*]** I cannot go on the court record or provide my address to the court as the 'address for service' of documents (that is, the address which you are required to provide to the court for receipt by Y of formal court documents sent by the court or other parties). Y will be listed on the court record as a litigant in person. You will need to provide Y's address as the 'address for service' of documents sent to them by the court and other parties.

[if authorised to conduct litigation*] I can go on the court record and provide my address to the court as the 'address for service' of documents. This is the address which must be provided to the court for receipt of formal court documents sent by the court or other parties.

[*] Delete as appropriate.

9. As you are instructing me without a solicitor, you must be sure that:
- (1) Y is able to do whatever is necessary for those matters that I cannot deal with; or
 - (2) you have made an arrangement with another person of suitable competence and experience to provide these services.

Circumstances when I may not be able to act for you

10. As a barrister, I must follow the Code of Conduct in the BSB Handbook, which is available on the BSB's website: <https://www.barstandardsboard.org.uk/>
11. That Code of Conduct requires me to consider whether a solicitor needs to be instructed in Y's best interests. If there comes a point at which I consider a solicitor is needed I will no longer be able to act for Y other than on the instructions of a solicitor. If I foresee that situation arising, I will give you as much notice as possible.

Legal aid

12. Y may be eligible for public funding or "legal aid" as it is usually referred to. However, as a barrister I cannot do legal aid work unless I have been instructed by a solicitor. If you want 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 advise you about legal aid arrangements relating to civil cases, e.g. where you are in a private dispute with another individual or organisation and criminal cases, e.g. where a crime may have been committed.
13. You can find out more information on the www.gov.uk website:

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

14. If you wish Y to be assessed for legal aid for a civil case, you can contact Civil Legal Advice. This is a service which provides advice about family, debt, benefits, housing, education or employment problems. You can call them on: 0845 345 4345. You can also use their online legal aid calculator. This is a tool which allows you to check whether Y can get legal aid for their case, if it is a civil case. This tool also allows you to get online advice and can help you find a legal adviser near you:
<https://www.gov.uk/check-legal-aid>
15. If Y does not qualify for legal aid, you might like to consider whether Y has any insurance policies that might cover their legal fees, or if the fees may be paid by someone else, for example a trade union.
16. I can advise and represent Y if:
 - Y makes an informed decision not to seek public funding;
 - Y makes a public funding application, e.g. Y has applied to get legal aid to help fund their case, that is rejected;
 - Y does not wish to take up an offer of public funding (perhaps because the level of contribution required is too much).
17. In signing these terms, you confirm that Y has been informed that they may be eligible for public funding and has been informed about where further information regarding this may be found. You are choosing to instruct me without the benefit of any public funding that may be available to Y.

My availability

18. As I carry out all my professional work personally, there will be times when I am not available to you. For example, if I am in court for a day or for several days in a row, I may be totally unavailable to all other clients during that time. If you are not able to contact me directly you can leave a message with my clerk and I will respond as soon as possible.

Fees

19. My fees for this work are set out in my covering letter.
20. Under this contract, you (not Y) are responsible for paying my fees.
21. If you owe me any fees and do not pay them for more than three months after I give you a fee note, interest will be payable at 2% above the Barclays Bank base rate from 28 days of the date of the fee note.

Cancellation

22. Your right to cancel (if any) is set out in my cover letter.
23. You will lose any right to cancel this contract if the services have been fully performed at your express request within the cancellation period (in which case I will ask you to confirm that you understand you will lose your right to cancel).

Documents and consent to process personal data

24. You and I agree that:

- a. I am entitled to keep copies of any documents you or Y give me for my own professional records for seven years in accordance with Rule C129 of the BSB Handbook; and
 - b. I will return all original documents to you and Y when I have carried out the work you have instructed me to do, in accordance with Rule C131 of the BSB Handbook.
25. I would prefer that you give me copies of documents rather than originals. However, if this is not possible, I may make a reasonable charge to you for producing photocopies.
26. In signing these terms, you confirm that you have given me your consent to process *your* personal data for the purpose of carrying out your instructions. You have a right to withdraw consent, but if you do so I will not be able to carry out your instructions.
27. You also confirm that *you* have obtained Y's consent to process Y's personal data for the purpose of instructing me and me carrying out your instructions. You confirm that you have informed Y they have a right to withdraw consent, but that if they do so I will not be able to carry out your instructions.
28. You also confirm that you will (i) obtain Y's consent for *me* to process Y's personal data for the purpose of instructing me and me carrying out your instructions, and (ii) provide this to me in writing. This written communication must confirm that you have informed Y they have a right to withdraw consent, but that if they do so I will not be able to carry out your instructions.

General obligations

29. The information which you give me about Y's case will be received in professional confidence. This means that I must maintain the confidentiality of any such

information and can only tell others about it if Y gives their consent for me to do so (which I would obtain if and when needed). The only exception is that statutory and other legal requirements may cause me to disclose (i.e. reveal) such information to governmental or other regulatory authorities or organisation whose rules I must meet, and to do so without first obtaining Y's consent to such disclosure or telling you and Y that I have done so. Statutory and legal requirements are rules or regulations that an individual must, by law, follow.

30. The contract we are making between us will be governed by English law, and any dispute will be subject to the jurisdiction of the English courts. Jurisdiction means the power and authority of a court or tribunal to determine the outcome of a case and to impose sanctions or penalties on those involved.

Complaints

31. I hope you and Y will be happy with the professional services I provide. However, if you are not satisfied, you should first refer the matter either to me or to my chambers in line with my chambers' complaints procedure. A copy of my chambers' complaints procedure is attached.
32. If you are not happy with my reply or my chambers' reply, then you can contact the Legal Ombudsman. The Legal Ombudsman is a free, impartial and independent service set up by the Government which deals with complaints about the service you have received. You must complain to the Ombudsman within six months of receiving a final response to your complaint from myself or from my 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 Ombudsman must also be made not more than six years after the act or omission complained about, or not more than three years from the date when you should reasonably have known that there were

grounds for complaint. For further details about how to make a complaint to the Legal Ombudsman, please contact the Legal Ombudsman directly at:

Legal Ombudsman
PO Box 6806
Wolverhampton
WV1 9WJ

Email: enquiries@legalombudsman.org.uk

Phone: 0300 555 0333

Website: www.legalombudsman.org.uk

Client's name (please print): XX

Client's signature: XX

Date: XX

**Bar Standards Board
October 2019**

Cancellation form

To [barrister's name, geographical address, fax and email]:

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract for the supply of the following service [*],

Ordered on [*],

Name of consumer(s): **XX**

Address of consumer(s): **XX**

Signature of consumer(s) (only if this form is notified on paper): **XX**

Date: **XX**

[*] Delete as appropriate.