



**PUBLIC ACCESS TO
BARRISTERS
GUIDANCE FOR LAY
CLIENTS**

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What is Public Access

- Members of the public may now go directly to a barrister.

1. Until recently, it was not possible for members of the public to go to a barrister directly; they needed to use a solicitor, or some other recognised form of access. This has now changed. Although the barrister's role remains the same, members of the public may now instruct a barrister direct (Public Access). The aim of this Guide is to help you understand the nature of a barrister's role and how you may be able to use Public Access.

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

- Barristers become involved where expert legal advice is needed, or where documents need to be drafted, or for advocacy.
- Barristers are not permitted to offer some of the services provided by solicitors.

2. The services offered by barristers are different from those offered by solicitors for two main reasons.

a) First the different service offered:

- BARRISTERS are trained as specialist advisers and advocates. This means that they become involved where expert legal advice is needed, where documents need to be drafted for their clients to use, or for advocacy (presenting a case in court or before some other tribunal or organisation).
- SOLICITORS also give advice to and draft documents for their clients to use or may instruct a barrister to provide this service. Some solicitors also provide advocacy services to their clients. Other solicitors instruct a barrister to provide advocacy services to their clients. In addition, solicitors generally take responsibility for the handling of a client's affairs, handle clients' money and take responsibility for the general management of a client's legal case (the conduct of litigation).

- b) Second, by law, barristers are not allowed to provide a wide range of services that solicitors offer.
3. Here are some examples of work which a barrister is allowed to do:
- a) A barrister may give you legal advice.
 - b) A barrister may draft documents for you, such as a will.
 - c) 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.
 - d) A barrister may draft a letter for you to send to another person (although a barrister may not sign or send the letter on your behalf or write the letter on his or her notepaper).
 - e) If a witness statement from you is required in proceedings, a barrister may prepare that statement from what you tell him or her. A barrister may also help to prepare witness statements from another person based on the information which that person has provided.
 - f) Where a case requires an expert witness (for example, a surveyor), 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 on your own notepaper.
4. The following are examples of work that a barrister is *not* allowed to do:
- a) A barrister is not allowed to issue proceedings on your behalf or to issue other applications or to take other formal steps in court or other proceedings.
 - b) A barrister may not use his or her notepaper to send letters on your behalf nor may he or she sign or send letters on your behalf.
 - c) A barrister is not allowed to investigate or collect evidence for use in proceedings. This means that, for example, a barrister is not allowed to contact possible witnesses to investigate what evidence they may be able to give.

- d) Similarly, a barrister is not allowed to instruct an expert witness on your behalf.
 - e) A barrister is not allowed to take responsibility for the handling of clients' affairs, or to take responsibility for the general management of a client's case, or to handle clients' money.
5. It is not possible for a barrister to waive the restrictions on the work which he or she is able to undertake. This is because these restrictions are imposed by law, or by the Bar Code of Conduct, which the barrister must comply with.

Are there any other restrictions on Public Access?

- Barristers must satisfy a number of conditions before they can accept Public Access work.
- There are number of areas of work where Public Access is expressly prohibited.

6. Subject to limited exceptions, before a barrister is permitted to accept Public Access work he or she must have
- a) practised for a total of three years following the completion of training
 - b) attended a "public access" training course approved by the Bar Council and
 - c) given certain notices which are required to be given by the Bar Code of Conduct.
7. Public Access is permitted in most areas of work. Those where it is not permitted, however, are as follows:
- a) Criminal work, except in the following areas:
 - i) Advisory work, except where proceedings have already started
 - ii) Appeals from the Justices to the Crown Court against sentence only and where no issue as to the calling of evidence of fact has arisen or is likely to arise

- iii) Appeals from the Justices to the High Court by way of case stated
 - iv) Appeals from the Crown Court to the Court of Appeal, Criminal Division, where no issue as to the calling of fresh evidence has arisen or is likely to arise
 - v) Appeals to the House of Lords or Privy Council
 - vi) Appeals to the European Court of Justice and the European Court of Human Rights
- b) Family work, except in the following areas:
- i) Advisory work or drafting, other than in connection with proceedings which have been commenced
 - ii) Hearings before the Child Support Commissioner and the Child Support Appeal Tribunal
 - iii) Appeals from the Justices to the High Court by way of case stated
 - iv) Appeals to the Court of Appeal, where no issue as to the calling of fresh evidence has arisen or is likely to arise
 - v) Appeals to the House of Lords or Privy Council
 - vi) Appeals to the European Court of Justice and the European Court of Human Rights
- c) Immigration work.

8. These restrictions are imposed by the Bar Code of Conduct and it is not possible for a barrister to waive them.

Is a barrister obliged to accept Public Access work?

- A barrister may choose not to accept Public Access work at all.
- If a barrister does accept Public Access work, he or she may not refuse to accept instructions on, for example, grounds of race, colour, nationality or gender.
- In deciding whether to accept instructions, a barrister is entitled to, and must,

consider whether that case is suitable for Public Access. If he or she decides that it is not suitable, he or she must decline the instructions.

- A barrister remain under a continuing duty to consider whether a case remains suitable for Public Access. If he or she decides that a case is no longer suitable for Public Access, he or she must refuse to continue to act on a Public Access basis.

9. Barristers are entitled to choose not to undertake Public Access work at all. However, if a barrister is willing in principle to undertake such work, then he or she may not refuse to accept instructions

a) On the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability or political persuasion; and

b) In the case of advocacy work, on the grounds

i) That the nature of the case is objectionable to him or her or to any section of the public

ii) That your conduct, opinions or beliefs are unacceptable to him or her or to any section of the public

iii) On any ground relating to the source of any financial support which may properly be given to you for the proceedings in question.

10. Before accepting Public Access work, and in addition to considering whether the work in question is work which they are allowed to do, the barrister will have to consider whether it is in your interests and in the interests of justice for them to accept the work. There will be legitimate reasons why the barrister may (and, on occasion, must) decide that it is inappropriate for him or her to accept your instructions. This is dealt with further in paragraphs 11 to 13 below.

11. The Bar Code of Conduct requires a barrister to refuse to accept instructions if he or she considers that it is in your interests or in the interests of justice for you to instruct a solicitor or other professional person. The barrister's duty in this respect is a continuing duty, so that if he or she considers, at any stage of your case, that you ought to instruct a solicitor or other professional person, the barrister must refuse to continue to act for you on a Public Access basis.

12. In considering whether your case is suitable for Public Access, the barrister is likely to take into account

- a) The nature of the work which you wish him or her to undertake
- b) Your ability to understand the requirements of your case and to arrange the performance of the services which would normally be carried out by a solicitor (including those referred to above).

13. Each case will depend on its particular facts. It is impossible, therefore, to provide a list of cases which will or will not be suitable for Public Access. Here is some guidance.

- a) The giving of an opinion on an area of law within the barrister's special expertise may well be suitable for public access. However, the more complex the factual background to the case, the more likely it is that the barrister will have to consider your particular circumstances, to determine whether or not you are capable of assembling the information required by the barrister to enable him or her to give a fully informed opinion.
- b) In relation to the provision of advocacy services :-
 - i) Generally, the more complex the case, the more likely it is that the barrister will decide that your interests or the interests of justice require the involvement of a solicitor and that he or she should therefore decline to accept instructions on a Public Access basis.
 - ii) For less complex cases the greater the role which contested evidence of fact will or is likely to play in the case the less likely it is to be suitable for Public Access.
 - iii) On the other hand, cases which are unlikely to involve factual disputes may well be suitable.

What if I qualify or may qualify for public funding ?

- If you may be eligible for public funding, a barrister is likely to advise you to approach a solicitor.

14. It is unlikely that a barrister will be able to carry out the means assessment required to establish whether you would qualify for public funding. Further, at present barristers are not able to apply to the Legal Services Commission for public funding on your behalf. If it appears that you may qualify for public funding, therefore, a barrister is likely to advise you to approach a solicitor with a franchise from the legal Services Commission to investigate this possibility.

How do I find a barrister

- A number of publications list barristers and their specialisations.
- If you approach a set of Chambers direct, the Senior Clerk or Practice Manager may be in a position to make a recommendation.

15. It is important to instruct a barrister who specialises in the appropriate area of law for your case.

16. If you do not know who to instruct, there are a number of ways of finding the right barrister. There are legal directories – for example, the Bar Directory (access to which may be obtained via the Bar Council’s website) Chambers & Partners Guide to the Legal Profession, Havers Companion to the Bar, or the Legal 500. In addition, many sets of Chambers publish their own web sites which contain information about the set of Chambers as a whole and individual barrister members.

17. 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 ?

- 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 in which the barrister practises and tell him or her that you wish to instruct the barrister directly.

- He or she will tell you what to do next.

18. Once you know who you want to instruct, then contact the Chambers from which the barrister practises and speak to the Senior Clerk or Practice Manager. You will have to explain to them that you wish to instruct the barrister directly and the nature of the work which you wish the barrister to undertake for you. It may be that they will ask you to send your written instructions (setting out the factual background to your case and what it is that you want the barrister to do). Alternatively, the barrister may decide that it would be appropriate in the first instance briefly to discuss the matter with you on the telephone or at a preliminary meeting to decide on the best way forward.

Proof of your identity

- The law requires the barrister, in certain circumstances, to obtain proof of your identity.

19. In certain 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 take place after you make the initial contact described in paragraph [18] above. Whether these procedures apply and, if so, how they should be followed, need to be considered by the barrister when you make the initial contact.

20. 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 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, bank or building society statement.
- b) If you are acting on behalf of a company, you will be required to produce a certified copy of Certificate of Incorporation, the latest accounts filed at Companies House and evidence that you are authorised to act on behalf of the company.

21. 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 which you bring and to retain those copies for 5 years.

What happens next ?

- The barrister will have to decide whether your case is suitable for Public Access. He or she may charge you for this.
- If your case is suitable for Public Access, you and the barrister will have to agree the terms on which he or she is to carry out the work. Those terms will be set out in a client care letter which will be sent to you.
- If your case is not suitable for Public Access, the barrister will tell you so. If you wish, he or she may recommend a suitable solicitor for you to instruct.

22. Some cases obviously will be suitable for Public Access. In such a case, and provided that (a) the barrister is willing to undertake the work, (b) agreement can be reached about the charge which will be made for that work and (c) where appropriate, you have provided satisfactory proof of your identity, your instructions will be accepted and a client care letter will be sent to you. The role and importance of the client care letter is described below.

23. In other cases, the barrister may suggest that you have a preliminary meeting before deciding whether or not to proceed with the instructions.

24. It is also open to a barrister to accept your instructions for the limited purposes of reading the papers and advising whether or not he or she is able to perform the substantive professional work which you wish him or her to undertake. If instructions are accepted for these limited purposes, it is important that you are both clear as to whether a charge is to be made for this work. If preliminary work is to be carried out and a charge made for that work, you will be sent a client care letter.

25. The sorts of factors which a barrister will have to consider when deciding whether or not to accept your instructions have been described in paragraphs [11] to [13] above. Much depends on the circumstances of your case. Here are some possibilities:

- a) The barrister might decide that your case is suitable for Public Access and that there is no need for the involvement of a solicitor. In such a case, you should still be aware that, if circumstances change, the barrister may have to advise you that a solicitor will need to be instructed.
- b) Your case is such that (whether because of its complexity, or because of the stage which it has reached) it is not suitable for Public Access and that a solicitor is required. In such a case, you should be told by the barrister why your case is not suitable but that he or she would be prepared to act for you if instructed by a solicitor. In such a case, and if you wish, you can ask the barrister to recommend a suitable solicitor to you.
- c) Although your case may become unsuitable for Public Access in the future, it is suitable for Public Access for the time being. In such a case, the barrister will inform you
 - i) of the work which is suitable for Public Access
 - ii) the likely point at which your case will become unsuitable for Public Access and
 - iii) that he or she will have to withdraw at that stage if a solicitor is not instructed by you.

26. If the barrister decides to accept your instructions, you will be sent a client care letter.

The client care letter

- The client care letter records the terms of the agreement between you and the barrister. It is a very important document and you must read it carefully.

27. When a barrister agrees to carry out work for you for which you will be charged, he or she must send you a client care letter. The client care letter is a very important document. It contains a description of the work to be undertaken, the basis on which you will be charged for that work, and the other terms of the agreement between you and the barrister. If you are unclear about any of the

contents of that letter, you must raise your concerns with the barrister immediately.

How will I be charged ?

- 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.
- The cost to you, and the time at which the fee becomes payable, is a matter for you to agree with the barrister.
- It is important that this agreement is reached at the outset and is clear to both you and the barrister.

28. There are no formal scales of fees for barrister's work. Generally, barristers charge according to their level of experience and the complexity and length of time involved in any particular matter. 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 his or her clerk. Barristers are all independent self-employed practitioners, competing with each other. If you consider the fee proposed by one barrister to be too high, try another barrister.
29. It is very important that you and the barrister agree from the outset the basis upon which you are to be charged for work and the time at which the fee will become payable.
30. Where the fee relates to a hearing, the barrister is normally entitled to the fee, whether or not the hearing goes ahead. If that is to be the case, the barrister will tell you. You may, if you wish, try to agree a different basis for payment of the fee in such a case.
31. In other cases (whether for a conference or for paperwork), 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. It may also be possible for you agree with the barrister that there should be a "ceiling" on the fee charged for a particular piece of work.
32. 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 he or she has completed it and before releasing it to you. If that is to be the case, the barrister should tell you at the outset.

33. Although conditional fee agreements (agreements under which a fee becomes payable only in the event of success in a case) are possible, we consider it unlikely that barristers will be able to undertake Public Access work on a conditional fee basis, save in very rare cases.

34. The barrister is required to keep sufficient records to justify the fees that he or she is charging. You are entitled to details to justify the fee that you are being charged.

Can a barrister stop acting for me after he or she has accepted my instructions

- The barrister may be required to stop acting for you in certain circumstances.
- In Public Access cases, the barrister is also required to stop acting for you if he or she considers that the case is no longer suitable for Public Access.
- The barrister may be able to assist if, as a consequence of his or her decision that he or she can no longer continue to act for you, you will or may experience difficulties in relation to an imminent hearing.

35. The Bar Code of Conduct requires a barrister to cease to act in a case in certain circumstances. This applies to all cases.

36. In Public Access cases, a barrister is also required to cease to act where he or she has 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 he or she forms 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, he or she 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 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, he or she 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 he or she has had to withdraw and, if appropriate, the reasons for it
- iii) Assist you to find solicitors.

Can I instruct a barrister direct when I have already instructed solicitors

- You may instruct a barrister direct, even where you have already instructed solicitors.

37. You may instruct a barrister direct even though you have already instructed solicitors. If you do so, the barrister will still have to consider whether he or she should accept your instructions. However, the fact that you have retained solicitors is not of itself a reason for refusing to accept your instructions; nor may the barrister contact your solicitors without your permission. However, there may be cases (for example, where your case involves existing litigation) where a barrister will refuse to accept your instructions unless you give him or her permission to contact and liaise with your solicitors.

Confidentiality and compulsory disclosure of information

- The barrister is required to keep your affairs confidential.
- However, a barrister may be required by law to disclose information to governmental or other regulatory authorities.

38. Your barrister will be under a strict professional duty to keep your affairs confidential. Legal professional privilege protects your communications with your barrister from disclosure. The only exception is that statutory and other legal requirements may cause a barrister to disclose information which he or she has received from you to governmental or other regulatory authorities and to do so

without first obtaining your consent to such disclosure or telling you that he or she has made it.

Complaints

- In the first instance, try the complaints system maintained by the barrister or his or her Chambers.
- Failing that, the Bar Council operates a complaints system.
- If you are not satisfied with the way in which the Bar Council has considered your complaint, you may take the matter up with the Legal Services Ombudsman.

39. A barrister is required to deal with all complaints courteously, promptly and in a manner that addresses the issues raised by the complaint. He or she is also required to have a written complaints procedure that should be made available to you if you ask for it. Whatever the nature of your complaint, therefore, you could take the matter up with the barrister in the first instance, or his or her Senior Clerk or Head of Chambers. The nature and speed of any response will depend upon the precise circumstances. For example, if your complaint is that the barrister has been negligent, he or she is required to inform his or her insurers and those insurers may need to be consulted about the response.

40. If this is not possible, or you are unhappy with the manner in which the barrister has dealt with your complaint, you should contact us. We regulate barristers' behaviour. We investigate complaints against barristers and take action against those who break the rules of the code of conduct. We do this in the interests of the public and to maintain the good name and standards of the profession. There is no charge for making a complaint to us. We have prepared a standard form on which you should make your complaint, as well as guidance notes to help you fill it in.

The address and phone number is:

Complaints Department
The General Council of the Bar
289-293 High Holborn
London WC1V 7HZ.
Phone: 020 7242 0082
Fax: 020 7831 9217
E-mail: complaints@barcouncil.org.uk

Website: www.barcouncil.org.uk

41. If you are not satisfied with the way in which we considered your complaint, you may contact the Legal Services Ombudsman to investigate how we handled it. The Ombudsman is not a lawyer. If the Ombudsman thinks that the complaint was not investigated properly, she can recommend that the complaint be reconsidered or that we pay compensation, or that the individual barrister or both of us have to pay.

The Ombudsman's address is:

The Legal Services Ombudsman

3rd Floor

Sunlight House

Quay Street

Manchester

M3 3JZ.

E-mail. enquiries.lso@oslo.gsi.gov.uk

Website: www.olso.org

Lo-call number: 0845 6010794 (charged at local rates and available nationally)