

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 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. This is explained in more detail below but can, in some cases, be a relatively complex and technical process.

**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 most suitable for reasonably straightforward cases and is likely to be inappropriate in cases involving children. 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 must 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 must 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, that is be taken to and through a court or tribunal, 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. 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, though you can ask or arrange sometimes for the court/tribunal and the other parties to copy documents to a third party other than the barrister.
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 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 our Code of Conduct. If they decide that it is not suitable, the rules require them to decline the 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, 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. 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. You can find out more information on the Gov.UK website:

<https://www.gov.uk/community-legal-advice>

11. Whether or not you may 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. If you do not wish to investigate whether you qualify for public funding, or if you qualify for public funding but would prefer to instruct a barrister directly, 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) 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; or
    - ii) 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.

### **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. By law, barristers are not able to provide some of the services that solicitors offer, such as 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 that only a solicitor can provide.
19. 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), 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 is not allowed to do:

- a) A barrister cannot file proceedings on your behalf with the court or file other applications or to take other formal steps in court or other proceedings. These actions, technically, constitute conducting litigation, which barristers are currently prohibited from doing. You will have to send the documents to the court, although the barrister could help prepare them for you.
- b) A barrister is not allowed to instruct an expert witness on your behalf (again, this would amount to conducting litigation).
- c) 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?**

21. 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?**

22. 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/>

23. 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, or the Legal 500. In addition, many sets of Chambers publish their own web sites which contain information about the different barristers who work there and the type of work they do.
24. 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. (A set of chambers is a practice where individual self-employed barristers share premises and administrative services.)

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

25. 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 works and tell them that you wish to instruct the barrister directly. They will tell you what to do next.
26. Alternatively, if the barrister works by themselves as a sole practitioner, you should contact the barrister's place of work. You will have to explain that you wish to instruct the barrister directly and the nature of the work which you wish the barrister to undertake for you. The barrister may want you to send him some further documents or alternatively may decide that the best option would be to meet and decide on the best way forward.

### **Proof of your identity**

27. 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 - it is likely that this will take place 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.
28. 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, 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.

29. 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.

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

30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. Although conditional fee agreements (agreements under which a fee becomes payable only in the event of success in a case) are possible, 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.
36. 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?**

37. 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 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 no longer continuing to act for you, you will or may experience difficulties in relation to an imminent hearing.
38. 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 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, the reasons for it;
    - iii) Assisting you to find solicitors.

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

39. 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 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 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**

40. 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 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 are not satisfied with the services the barrister has provided, you should first refer the matter either to the barrister or to their Chambers. If you would like a copy of the Chambers complaints procedure, please ask either the barrister or the Chambers.
42. If you are not happy with the barrister's reply or with the Chambers' reply then you can contact the Legal Ombudsman (as long as you complain to the Legal Ombudsman within 12 months of discovering that there was a problem). The contact details are as follows:

Legal Ombudsman  
PO Box 15870,  
Birmingham  
B30 9EB

Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

Phone: 0300 555 0333

43. Frequently Asked Questions concerning the new Legal Ombudsman can be found on the Bar Standards Board website:

<https://www.barstandardsboard.org.uk/complaints-and-professional-conduct/concerns-about-a-barrister/frequently-asked-questions-complaints/faqs-complaints-about-a-barrister-that-is-acting-or-has-acted-for-you/#LEO>

**Bar Standards Board  
XXXX 2013**