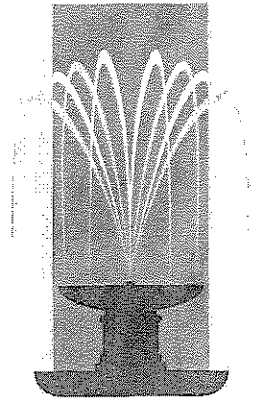


Date: 27 April 2012

Mr E Macleod
Bar Standards Board
289-293 High Holborn
London
WC1V 7HZ



FOUNTAIN
CHAMBERS
MIDDLESBROUGH

Sirs,

My clerk Russell Ayles tells me that he has recently been in discussions with you over the issue of the public access rules, particularly rule 3(1), which prohibits an appropriately qualified barrister from accepting direct instructions from or on behalf of a lay client in or in connection with any matter or proceedings in which it is likely that the lay client would be eligible for public funding.

As I am based in Middlesbrough I am often called upon to represent soldiers at the Court Martial Centre in Catterick. A serious problem has emerged in recent months.

The vast majority of soldier defendants are accused of offences that are relatively straightforward, typically AWOL, assaults and relatively minor instances of dishonesty. Even in the rare event of trial, such cases would not normally last more than two working days, perhaps three at the outside. Expert examination or evidence is rarely required. The trial advocate meets the client, takes instructions, cross-examines the prosecution witnesses and calls evidence from the accused. One can therefore well imagine that one lawyer attending the client on one or two occasions, thereafter attending court, can easily deal with the majority of such cases.

Such work could and should fall within the ambit of directly instructed counsel. Regrettably, because all soldiers are in principle eligible for legal aid under the Army Criminal Legal Aid Authority scheme, rule 3(1) of the public access rules prevents counsel from accepting such instructions. In effect soldiers are obliged to retain the services of solicitors if they want to be represented. Those solicitors are funded either by private payment or under the ACLAA scheme. In the event that the accused soldier decides to accept public funding, the fact of their employment invariably requires him or her to pay a massive part of their wages in assessed legal aid contributions. I have heard that the typical monthly sum, even for a private soldier accused of the simplest AWOL, is £1400 per month.



No soldier can afford this. This funding trap means that many are now choosing to appear before the Court Martial unrepresented. The only way to make the case affordable is to ensure that a case comes to trial within one or two months of the legal aid order being made. Witness, listing difficulties and statutory timetables for case events such as defence case statements and disclosure often prevent this from happening, despite best efforts on the part of all concerned. The result is that an accused soldier might be forced to make three or four large payments for his or her legal aid in a case that might actually be relatively straightforward and capable of being conducted for half the cost expended if the soldier were given the chance to directly instruct counsel and pay privately.

This problem must be addressed. The public access rules as presently drafted conspire to deny members of our armed forces access to a proper and cost-effective choice of legal advice in many cases.

I know this happens not only from my own experience of proceedings but also because I have heard of many such examples from those based at Catterick namely the resident judge, Judge Advocate Camp; and Lt. Col. Michael Brook who runs the MCC administration with Mrs. Angela Kelly and Mrs. Beryl Barker. I have copied them into this letter and suggest that you make contact with them, that you might more fully understand the scale of this ongoing problem.

Yours truly,


TOM MITCHELL, Barrister-at-Law