

## Proposed changes to the Public Access Rules

The current Public Access Rules are Rules C119 – C131 of the BSB Handbook (Section D2.1). The proposed changes to the Public Access Rules are in bold below.

### D2.1 PUBLIC ACCESS RULES

rC119 These rules apply to *barristers* instructed by or on behalf of a lay *client* (other than a *licensed access client*) who has not also instructed a *solicitor* or other *professional client* (public access clients). Guidance on public access rules is available on the *Bar Standards Board* website:

<https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>.

rC120 Before accepting any *public access instructions* from or on behalf of a *public access client*, you must:

- .1 be properly qualified by having been issued with a full *practising certificate*, by having satisfactorily completed the appropriate public access training, and by registering with the *Bar Council* (**acting by the *Bar Standards Board***) as a public access practitioner;
- .2 ~~if you were already registered with the *Bar Council* to undertake public access work on October 4 2013 then they must undertake any additional training required by the *Bar Standards Board* within 24 months of that date or cease to undertake public access work;~~ removed from [date];
- .3 take such steps as are reasonably necessary to ascertain whether it would be in the best interests of the *client* or in the interests of justice for the public access client to instruct a *solicitor* or other *professional client*; and
- .4 take such steps as are reasonably necessary to ensure that the *client* is able to make an informed decision about whether to apply

for legal aid or whether to proceed with public access.

rC121 As a *barrister* with less than three *years' standing* who has completed the necessary training, you must:

- .1 Have a *barrister* who is a qualified person within Rule S22 and has registered with the *Bar Council (acting by the Bar Standards Board)* as a public access practitioner readily available to provide guidance to you;
- ~~.2 **Maintain a log of public access cases you have dealt with, including any issues or problems which have arisen;**~~
- ~~.3 **Seek appropriate feedback from you public access clients on the service provided;**~~
- ~~.4 **Make this log available, on request, to the Bar Standards Board for review.**~~

rC122 You may not accept ~~direct~~ *instructions* from or on behalf of a public access *client* ~~in or in connection with any matter of proceedings in which~~ if, in all the circumstances, it would be in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client*.

rC123 In any case where you are not prohibited from accepting *instructions*, you must at all times consider the developing circumstances of the case, and whether at any stage it is in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client*. If, after accepting ~~direct~~ *instructions* from a public access *client* you form the view that circumstances are such that it would be in the best interests of the public access *client*, or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client* you must:

- .1 inform the public access *client* of your view; and

- .2 withdraw from the case in accordance with the provisions of Rules rC25 and rC26 and associated guidance unless the *client* instructs a *solicitor* or other *professional client* to act in the case.

rC124 You must have regard to guidance published from time to time by the *Bar Standards Board* in considering whether to accept and in carrying out any *public access instructions*.

rC125 Having accepted *public access instructions*, you must forthwith notify your public access *client* in writing, and in clear and readily understandable terms, of:

- .1 the work which you have agreed to perform;
- .2 the fact that in performing your work you will be subject to the requirements of Parts 2 and 3 of this *Handbook* and, in particular, Rules rC25 and rC26;
- .3 unless authorised to *conduct litigation* by the *Bar Standards Board*, the fact that you cannot be expected to perform the functions of a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to *conduct litigation*** and in particular to fulfil ~~limitation obligations, disclosure obligations and other~~ obligations arising out of or related to the *conduct of litigation*;
- .4 the fact that you are self-employed, ~~are not a member of a firm and do not take on any arranging role~~; **are not employed by a regulated entity and (subject to Rule S26) do not undertake the management, administration or general conduct of a *client's* affairs**;
- .5 in any case where you have been instructed by an *intermediary*:
  - .a the fact that you are independent of and have no liability for the *intermediary*; and
  - .b the fact that the *intermediary* is the agent of the lay *client* and

not your agent;

- .6 the fact that you may be prevented from completing the work by reason of your professional duties or conflicting professional obligations, and what the *client* can expect of you in such a situation;
- .7 the fees which you propose to charge for that work, or the basis on which your fee will be calculated;
- .8 your contact arrangements; and
- .9 the information about your complaints procedure required by D1.1 of this Part 2.

rC126 Save in exceptional circumstances, you will have complied with Rule rC125 above if you have written promptly to the public access *client* in the terms of the model letter provided on the *Bar Standards Board* website.

rC127 In any case where you have been instructed by an *intermediary*, you must give the notice required by Rule ~~C123~~ **C125** above both:

- .1 directly to the public access *client*; and
- .2 to the *intermediary*.

rC128 Having accepted *public access instructions*, you must keep a case record which sets out:

- .1 the date of receipt of the *instructions*, the name of the lay *client*, the name of the case, and any requirements of the *client* as to time limits;
- .2 the date on which the *instructions* were accepted;
- .3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;  
**and**

.4 when agreed, the fee.

rC129 Having accepted *public access instructions*, you must either yourself retain or take reasonable steps to ensure that the lay *client* will retain for at least seven years after the date of the last item of work done:

- .1 copies of all *instructions* (including supplemental *instructions*);
- .2 copies of all advices given and documents drafted or approved;
- .3 the originals, copies or a list of all documents enclosed with any *instructions*; **and**
- .4 notes of all conferences and of all advice given on the telephone.

rC130 ~~Having accepted *public access instructions*, you may undertake correspondence where it is ancillary to permitted work, and in accordance with the guidance published by the *Bar Standards Board*.~~  
**removed from [date].**

rC131 Save where otherwise agreed:

- .1 you shall be entitled to copy all documents received from your lay *client*, and to retain such copies permanently;
- .2 you shall return all documents received from your lay *client* on demand, whether or not you have been paid for any work done for the lay *client*; **and**
- .3 you shall not be required to deliver to your lay *client* any documents drafted by yourself in advance of receiving payment from the lay *client* for all work done for that *client* **and**
- .4 ~~**having accepted *public access instructions* in any civil matter, you may take a proof of evidence from your *client* in that matter.**~~

## Proposed changes to the Licensed Access Rules

The current Licensed Access Rules are Rules C132 – C141 of the BSB Handbook (Section D2.2). The proposed changes to the Licensed Access Rules are in bold below.

### D2.2 LICENSED ACCESS RULES

rC132 Subject to these rules and to compliance with the Code of Conduct (and to the *Scope of Practice, Authorisation and Licensing Rules*) a *barrister* in self-employed *practice* may accept *instructions* from a *licensed access client* in circumstances authorised in relation to that *client* by the Licensed Access Recognition Regulations (<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>) whether that *client* is acting for themselves or another.

rC133 These rules apply to every matter in which a *barrister* in self-employed *practice* is instructed by a *licensed access client* save that Rules rC134.2, ~~rC136, rC137~~ and rC139 do not apply to any matter in which a *licensed access client* is deemed to be a *licensed access client* by reason only of paragraph 7 or paragraph 8 of the Licensed Access Recognition Regulations (<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>).

rC134 You are only entitled to accept *instructions* from a *licensed access client* if at the time of giving *instructions* the *licensed access client*:

- .1 is identified; and
- .2 ~~sends you a copy of the~~ you ensure that the *licensed access client* holds a valid Licence issued by the *Bar Standards Board* (either by requiring the *licensed access client* to send you a copy of the Licence, or referring to the list of *licensed access clients* published on the *Bar Standards Board* website).

rC135 A *barrister* must not accept any *instructions* from a *licensed access client*:

- .1 unless you **and your chambers** are able to provide the services required of you by that *licensed access client*;
- .2 if you consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or **other authorised litigator other person who is authorised to conduct litigation** or some other appropriate *intermediary* (as the case may be) be instructed either together with you or in your place.

rC136 ~~Having accepted instructions from a licensed access client otherwise than on the terms of the Licensed Access Terms of Work, you:~~

- ~~.1 must first agree in writing the terms upon which you have agreed to do the work and the basis upon which you are to be paid;~~
- ~~.2 must keep a copy of the agreement in writing with the licensed access client setting out the terms upon which you have agreed to do the work and the basis upon which you are to be paid. If you agree standard terms with a licensed access client, you must keep a copy of the agreement in writing with the licensed access client setting out the terms upon which you have agreed and the basis upon which you are to be paid.~~

rC137 Having accepted *instructions* from a *licensed access client*, you must promptly send the *licensed access client*:

- .1 a statement in writing that the *instructions* have been accepted (as the case may be) **(1)** on the standard terms previously agreed in writing with that *licensed access client* **or (2) on the terms of the Licensed Access Terms of Work (and thereafter if requested a copy of the Licensed Access Terms of Work)**; or
- .2 if you have accepted *instructions* otherwise than on such standard terms **or on the terms of the Licensed Access Terms of Work**, a

copy of the agreement in writing with the *licensed access client* setting out the terms upon which you have agreed to do the work and the basis upon which you are to be paid; **and**

- .3 unless you have accepted *instructions* on ~~the terms of the Licensed Access Terms of Work or on standard~~ terms which incorporate the following particulars must at the same time advise the *licensed access client* in writing of:
- .a the effect of rC21 as it relevantly applies in the circumstances;
  - .b unless authorised by the *Bar Standards Board* to *conduct litigation*, the fact that you cannot be expected to perform the functions of a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to conduct litigation** and in particular to fulfil ~~limitation obligations disclosure obligations and other~~ obligations arising out of or related to the *conduct of litigation*; **and**
  - .c the fact that circumstances may require the *client* to retain a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to conduct litigation** at short notice and possibly during the case.

rC138 If at any stage you, being instructed by a *licensed access client*, consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to conduct litigation** or some other appropriate *intermediary* (as the case may be) be instructed either together with you or in your place:

- .1 you must forthwith advise the *licensed access client* in writing to instruct a *solicitor* or ~~other authorised litigator~~ **other person who is authorised to conduct litigation** or other appropriate *intermediary* (as the case may be); **and**
- .2 unless a *solicitor* or ~~other authorised litigator~~ **other person who is**



**authorised to *conduct litigation*** or other appropriate *intermediary* (as the case may be) is instructed as soon as reasonably practicable thereafter you must cease to act and must return any *instructions*.

rC139 If at any stage you, being instructed by a *licensed access client*, consider that there are substantial grounds for believing that the *licensed access client* has in some significant respect failed to comply **either** with the terms of the Licence granted by the *Bar Standards Board* **or (where applicable)** ~~with the terms of the Licensed Access Terms of Work~~ you must forthwith report the facts to the *Bar Standards Board*.

rC140 Having accepted *instructions* from a *licensed access client*, you must keep a case record ~~(whether on card or computer)~~ which sets out:

- .1 the date of receipt of the *instructions*, the name of the *licensed access client*, the name of the case, and any requirements of the *licensed access client* as to time limits;
- .2 the date on which the *instructions* were accepted;
- .3 the dates of subsequent *instructions*, of the despatch of advices and other written work, of conferences and of telephone conversations;  
**and**
- .4 when agreed, the fee.

rC141 Having accepted *instructions* from a *licensed access client*, you must either yourself retain or take reasonable steps to ensure that the *licensed access client* will retain for ~~six~~ **seven** years after the date of the last item of work done:

- .1 copies of *instructions* (including supplemental *instructions*);
- .2 copies of all advices given and documents drafted or approved;
- .3 a list of all documents enclosed with any *instructions*; **and**

.4 notes of all conferences and of all advice given on the telephone.

# Proposed changes to the Licensed Access Recognition Regulations

The current Licensed Access Recognition Regulations can be found on the BSB's website: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>. The proposed changes to the Licensed Access Recognition Regulations are in bold below.

## **THE LICENSED ACCESS RECOGNITION REGULATIONS**

1. Authorised licensed access clients are those persons and organisations and/or their members and/or their or their members' employees (as the case may be) who have from time to time been approved as such by the Bar Standards Board.
2. Any person or organisation wishing to be approved as an authorised licensed access client shall apply in writing to the Bar Standards Board by completing an application form in such form and supplying such other information as the Bar Standards Board may from time to time or in any particular case require.
3. In approving any person or organisation as an authorised licensed access client the Bar Standards Board may grant such approval in each case as the Bar Standards Board may think appropriate:
  - (a)
    - (i) on a provisional basis or
    - (ii) on a full basis;
  - (b)
    - (i) for a fixed period or
    - (ii) for a fixed period subject to extension or
    - (iii) indefinitely;
  - (c)
    - (i) to the person or organisation and/or
    - (ii) to some or all of the members of the organisation and/or

(iii) to some or all of the employees of the person or organisation or its members;

(d) in relation to matters concerning

(i) the person or organisation and/or its members (as the case may be) and/or

(ii) his or its or its members' employees and/or

(iii) his or its or its members' clients or customers; **and**

(e) subject to such limitations or conditions as the Bar Standards Board may think appropriate. **relating to**

~~(i) the matters in relation to which the authorised licensed access client may instruct a barrister and/or~~

~~(ii) the courts or tribunals before which a barrister so instructed may exercise a right of audience and/or~~

~~(iii) such other matters (including the means by which the authorised licensed access client shall instruct a barrister) as seem relevant in the circumstances.~~

4. The Bar Standards Board shall issue to every person or organisation approved as an authorised licensed access client a Licence in such form as the Bar Standards Board may from time to time or in the particular case think appropriate. Such Licence (which may be a provisional Licence or a full Licence):

(a) shall specify (i) the name of the person or organisation who has been approved as an authorised licensed access client (ii) the period (if any) for which the Licence has been granted or (as the case may be) that the Licence has been granted indefinitely and (iii) the limitations or conditions (if any) subject to which the Licence has been granted; **and**

~~(b) may if the Bar Standards Board think appropriate provide that unless otherwise first agreed in writing with an individual barrister or chambers all instructions accepted by any barrister from the authorised licensed access client will be deemed to be given and accepted on the terms of the Licensed Access Terms of Work as approved from time to time by the Bar Standards~~

**Board;**

~~(c) may if the Bar Standards Board think appropriate provide that a copy of the Licence shall be sent with every set of instructions to any barrister instructed by the authorised licensed access client;~~

~~(d) (b)~~ shall remain at all times the property of the **General Council of The Bar Bar Standards Board** to whom (or to whose duly appointed officer) it shall be surrendered on demand.

5. The Bar Standards Board may from time to time:

(a) approve additional persons or organisations as authorised licensed access clients;

(b) withdraw approval (either wholly or in part) from any person or organisation as an authorised licensed access client;

(c) increase reduce or otherwise alter the period for which a person or organisation is approved as an authorised licensed access client;

(d) alter or revoke the limitations or conditions (if any) attached to any approval of a person or organisation as an authorised licensed access client or impose new or additional limitations or conditions;

(e) cancel and demand the surrender of any Licence issued under paragraph 4 of these regulations.

6. In exercising their functions under paragraphs 1, 2, 3, 4 and 5 of these regulations the Bar Standards Board shall comply with the **statutory regulatory** objectives referred to in ~~section 17(1) of the Courts and Legal Services Act 1990 and section 1(2) of the Access to Justice Act 1999~~ **section 1 of the Legal Services Act 2007**, may consult with such persons organisations or bodies as they think appropriate and shall to such extent as they may think appropriate in the particular case have regard to the following matters:

~~(a) the fact that barristers in independent practice operate as a referral profession of specialist consultants;~~

~~(b) (a)~~ the extent to which the person or organisation or its members (as the case may be) are likely to have a significant requirement to retain the services of a barrister for their own benefit or for the benefit of their employers, employees, members, clients or customers (as the case may be);

~~(c) (b)~~ the extent to which whether as a result of professional or other relevant training or by reason of practice and experience the person or organisation or its employees or members (as the case may be) are or may reasonably be expected to be:

(i) providers of skilled and specialist services

(ii) competent in some identifiable area of expertise or experience

(iii) familiar with any relevant area of law

(iv) possessed of the necessary skills to obtain and prepare information and to organise papers and information sufficiently to enable the barrister to fulfill **his** **their** duties in a non-contentious matter to the client and in a contentious matter both to the client and to the court

(v) possessed of the necessary skills to take charge and have the general conduct of the matters in respect of which they wish to retain the services of a barrister;

(d) the extent to which the affairs and conduct of the person or organisation or its members (as the case may be) are subject to some appropriate professional disciplinary regulatory or other organisational rules;

(e) the extent to which the person or organisation or its members (as the case may be):

(i) are insured against claims for negligence in relation to their handling of matters in respect of which they wish to retain the services of a barrister

(ii) have made and continue to comply with satisfactory arrangements for holding in separate accounts and maintaining as trust monies any monies received from third parties

(iii) have made and continue to comply with satisfactory arrangements for ensuring that barristers' fees are promptly paid; **and**

(f) such other facts and matters (if any) as seem to them to be relevant in the circumstances.

7. Notwithstanding paragraphs 2, 3 and 4 of these regulations any member of any of the bodies referred to in the First Schedule to these regulations shall be deemed to be an authorised licensed access client (including in relation to matters concerning that member's clients or customers) but

**(a)** only in a matter of a kind which falls generally within the professional expertise of the members of the relevant body; **and**.

~~**(b) not for the purpose of briefing counsel to appear in or exercise any right of audience before the Judicial Committee of the House of Lords the Privy Council the Supreme Court the Crown Court a County Court or the Employment Appeals Tribunal.**~~

8. Notwithstanding paragraphs 2, 3 and 4 of these regulations any of the following shall be deemed to be an authorised licensed access client:

(a) an arbitrator, (including for these purposes an adjudicator under the Housing Grants Construction and Regeneration Act 1996) **(as amended)**, but only when instructing **counsel a barrister** for the purpose of advising on any point of law, practice or procedure arising in or connected with an arbitration in which ~~he has~~ **they have** been or may be appointed; **and**

(b) any person who has been appointed to one of the offices of Ombudsman referred to in the Second Schedule to these regulations, but only when instructing **counsel a barrister** for the purpose of advising on any point of law, practice or

procedure arising in the course of the performance of ~~his~~ **their** duties.

9. Nothing in paragraphs 7 and 8 of these regulations shall prevent:

(a) any person to whom paragraph 7 or paragraph 8 applies making an application in accordance with paragraph 2 of these regulations (in which event paragraphs 3, 4, 5 and 6 of these regulations shall apply to such application and to any Licence issued pursuant to such application);

(b) the Bar Standards Board exercising in relation to any person to whom paragraph 7 or paragraph 8 applies the powers conferred by paragraphs 5(b), 5(c) and 5(d) of these regulations (in which event paragraph 6 of these regulations shall apply).

**THE FIRST SCHEDULE (professional associations may apply to the Bar Standards Board to be added to the First Schedule in accordance with the Licensed Access Recognition Regulations)**

**Part I - Accountants and taxation advisers**

1. The Association of Authorised Public Accountants
2. Association of Taxation Technicians
3. The Association of Chartered Certified Accountants
4. The Chartered Institute of Management Accountants
5. Institute of Chartered Accountants in England and Wales
6. ~~The Institute of Chartered Accountants in Ireland~~ **Chartered Accountants Ireland**
7. Institute of Chartered Accountants ~~in~~ **of** Scotland
8. The Chartered Institute of Taxation
9. The Institute of Financial Accountants
10. ~~The Institute of Indirect Taxation~~

**Part II - Insolvency practitioners**

1. Insolvency Practitioners Association



## **Part III - Architects surveyors and town planners**

~~2. The Architects Registration Council of the UK~~ **1. Architects Registration Board**

~~3. The Architects and Surveyors Institute~~

~~4. 2. Association of Consultant Architects~~

~~5. 3. The Royal Institute of British Architects~~

~~6. 4. The Royal Institution of Chartered Surveyors~~

~~7. 5. The Royal Town Planning Institute~~

## **Part IV - Engineers**

1. The Institution of Chemical Engineers

2. The **Chartered** Institution of Civil Engineering Surveyors

3. The Institution of Civil Engineers

4. The Institution of Engineering and Technology

5. Institution of Mechanical Engineers

6. The Institution of Structural Engineers

## **Part V - Valuers**

~~1. The Incorporated Society of Valuers & Auctioneers~~

## **Part VI - Actuaries**

~~2. 1. The Institute and Faculty of Actuaries~~

~~3. Institute of Actuaries~~

## **Part VII - Chartered secretaries and administrators**

1. The Institute of Chartered Secretaries and Administrators: **The Governance Institute**

## **Part VIII - Insurers**

~~2. 1. The Association of Average Adjusters~~

~~3. 2. The Chartered Institute of Loss Adjusters~~

~~4. 3.~~ The Chartered Insurance Institute

**THE SECOND SCHEDULE (ombudsman services may apply to the Bar Standards Board to be added to the Second Schedule in accordance with the Licensed Access Recognition Regulations)**

~~1. Parliamentary Commissioner for Administration~~ The Parliamentary and Health Service Ombudsman

~~2. Commissioner for Local Administration (England)~~ The Commission for Local Administration

~~3. Commissioner for Local Administration (Wales)~~ Public Services Ombudsman for Wales

~~4. Health Service Commissioner~~

~~5. Banking Ombudsman~~ 4. The Financial Ombudsman Service

~~6. Building Society Ombudsman~~

~~7. Insurance Ombudsman Bureau~~

~~8. The Personal Investment Authority Ombudsman Bureau Ltd~~

~~9. 5.~~ The Legal ~~Services~~ Ombudsman