



BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

## **GUIDANCE FOR CLERKS REGARDING PUBLIC ACCESS AND LICENSED ACCESS RULES**

### **Introduction**

1. The purpose of this Guidance is to explain, in general terms, how the licensed access and public access schemes work and to show how lay clients can use it to instruct barristers. This document does not deal with obligations under the Proceeds of Crime Act, Money Laundering Regulations or Equality Act 2010. Barristers do not, and cannot, delegate their responsibilities under the Proceeds of Crime Act or the Money Laundering Regulations to their clerks. It will at all times be the responsibility of barristers to ensure compliance with any obligations which may arise.
2. Further guidance for barristers and clients about the public access scheme can be obtained from the BSB's website at the following link:  
  
<http://www.barcouncil.org.uk/for-the-bar/practice-updates-and-guidance/public-access-guidance/>
3. Since 2004 members of the public have been able to go directly to a barrister without having to involve an instructing solicitor or other intermediary. In the past it was necessary for clients to use a solicitor or other recognised third party through whom the barrister would be instructed.
4. Although the barrister's role remains essentially the same, members of the public may instruct a barrister directly through the public access scheme, provided the barrister has a full practising certificate, has undertaken the appropriate training and otherwise complies with their various Code obligations.

### **What is Licensed Access?**

5. In 1990 a number of professions were recognised as entitled to instruct barristers without a solicitor: this was at that time called "Direct Professional Access". Accountants, tax specialists and surveyors are the three professions which have made the greatest use of this arrangement. This arrangement has since been extended to members of various other groups and to various individual bodies, which in each case were granted a licence for this purpose: this was then called "BarDIRECT". All these arrangements are now called "Licensed Access".

## **A. Initial contact and acceptance of instructions**

6. Ascertain whether the client contacting Chambers has a BSB licence to instruct the Bar directly and if so what types of work the licence covers. For practical purposes three categories are so entitled:-
  - (a) Recognised professions (formerly Direct Professional Access): a list is available from the Qualifications Committee of the BSB - See Code of Conduct annex F1 First Schedule.
  - (b) Members of organisations which have group licences (formerly BarDirect): a list is available from the Qualifications Committee of the BSB
  - (c) Individual licences (formerly BarDirect): a list is available from the Qualifications Committee of the BSB

### **If licensed access**

7. If the client is exercising an individual licence, request that a copy be supplied. If the client presents himself as a member of a recognised profession or of an organisation which has a group licence, and if uncertain of client, check in appropriate professional or trade directory.
8. Place the enquiry before the intended barrister to ascertain whether the barrister considers it proper to accept the case on licensed access.
9. If the intended barrister considers it proper to accept the case on licensed access, write to client notifying that the case is accepted, the terms on which it is accepted and the basis upon which he is to be paid (if it is wished to withhold delivery of paperwork until fee paid, set this out expressly in letter). However, these requirements do not apply to any of the bodies set out in the Code of Conduct annex F1 First Schedule. See requirements of Licensed Access Rules and Terms of Work.

### **If public access**

10. Check whether the intended barrister:
  - (a) Has a full practising certificate (if the barrister has less than three years' standing they will also need to have an experienced public access barrister who readily available to provide guidance);
  - (b) Has undertaken public access training; and
  - (c) Has notified Bar Council that he will accept public access work.
11. Place the enquiry before the intended barrister to ascertain whether the barrister considers it proper to accept the case on public access. This decision will be based on a number of factors including the complexity of the case and the ability of the client to undertake aspects of the case.

12. The areas of work permitted under the scheme have now been widened to include work in the areas of crime, family and immigration. However, it should be noted that the restriction on the conduct of litigation remains. Barristers should not accept cases where there is an expectation that they will carry out litigation. It is suggested that in the event of any uncertainty you should contact the Bar Council's public access helpline: 020 7611 1472.
13. Barristers can now also accept public access cases where the client is eligible for legal aid, provided reasonable steps have been taken to ensure the client has made an informed decision to choose public access. It should be noted that barristers are unlikely to be able to conduct a means assessment to establish whether a client will qualify for public funding. Nor are barristers at present able to apply to the Legal Services Commission for public funding on behalf of a client. Therefore, if a barrister is approached by a person whose circumstances are not such as to make it obvious that he will not be eligible for public funding, the barrister should advise the client that he cannot investigate the possibility of public funding and advise the client to approach a solicitor to investigate this possibility. The barrister should also inform the client that they can visit the Gov.UK website for further information:

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

14. Before accepting instructions it is good practice for the barrister to discuss with the client how they will pay and the discussion should cover whether public funding may be available to the client, whether the client has any insurance policies that might cover the fees, and whether the fees may be paid by someone else such as a trade union. It is essential that all clients clearly understand the implications of choosing public access and the likely costs which they will incur by not accessing public funds. If a client is eligible for public funding but has chosen to instruct a barrister directly the client care letter should explain the situation in a clear and understandable fashion. The barrister should obtain written confirmation from the client that they understand that legal aid might be available but the client would prefer to instruct a barrister directly, for example a paragraph to this effect could be inserted into the model client care letter.
15. If the barrister is not willing to accept the case, notify the prospective client as soon as possible. Remind the barrister to keep a record of the reasons for declining the work. If the barrister is uncertain whether it would be proper to accept, and wishes to have a no-fee meeting with the prospective client before deciding, arrange the meeting. Write to the client to ensure that the limited purpose of the meeting is understood.
16. If the barrister is uncertain whether it would be proper to accept and wishes to be paid for having a meeting with the client and/or for reading documents before deciding, ensure that the barrister writes a client care letter to the client in respect of such preliminary work.
17. If and when the barrister decides to accept instructions, ensure that the barrister sends a client care letter. The clerk should assist the barrister to select an appropriate fee option, and to insert suitable figures. The letter forms the basis of the relationship between the barrister and the client, and it will be considered professional misconduct if a properly worded letter is not sent to the client.

18. Ensure a copy of this letter is filed and stored safely and open a case record on the Chambers computer. Ensure the client countersigns and returns a copy of the client care letter. File the countersigned letter.
19. If the client is acting as an intermediary for the ultimate lay client, ensure that the barrister not only sends an appropriate client care letter to the intermediary, but also an appropriate letter to the lay client.

**B. After case accepted** (both licensed access and public access)

20. Notify the client when paperwork is done. If the fee has been agreed to be time based, notify the client what the fee has come to. Record such notification on the Chambers computer.
21. If an agreement has been made with the client that the paperwork will not be delivered until the fee is paid, ensure that fee has been received before paperwork is delivered. If the paperwork is delivered by e-mail, consider whether it should also be delivered in hard copy form.

**C. After work done** (both licensed access and public access)

22. Maintain the case record on the Chambers computer of all relevant actions and payments, as with a solicitor access case.
23. Keep in an ordered filing system copies of letters to and from the barrister regarding acceptance of instructions and fees.
24. Remind the barrister to archive necessary papers for at least 7 years for a public access case and 6 years for a licensed access case. This will include:
  - (a) all drafts and advices prepared by the barrister,
  - (b) the barrister's notes of all meetings and telephone calls,
  - (c) either a list of all papers before the barrister, or copies of them,
  - (d) identification documents if the barrister has considered work to be "relevant business" within the Money Laundering Regulations.

**Additional requirements for public access barristers with less than three years' standing**

25. The prohibition on barristers with less than three years' standing undertaking public access work has been removed. However, in addition to having access to a qualified person such barristers are also required to:
  - (a) keep a log of the public access cases he has dealt with and record any issues or problems that have arisen; and

(b) where possible and appropriate, seek feedback from public access clients.

A pro forma for logging cases is attached at Annex A of the BSB's guidance for barristers. The purpose of this requirement is to assist the Bar Standards Board in assessing whether the removal of the prohibition has introduced any unacceptable risk in to the process. Therefore the BSB will sample a selection of these logs to gauge the impact of the rule change.

**XXXX 2013**  
**Bar Standards Board**