

Summary of Responses to the Public Access Rules Questionnaires

As part of its review of the functioning of the Public Access scheme, the Bar Standards Board canvassed the opinions of chambers, Public Access practitioners, interested consumer groups and lay clients who had used the Public Access system. In February 2007 the Bar Standards Board sent out questionnaires to all chambers and all registered Public Access practitioners. The questionnaires were slightly different, but focussed on similar issues and are hence summarised together, as opposed to responses from laymen. The chambers questionnaires were sent to all Heads of Chambers and all senior clerks, as well as to relevant consumer groups and the Legal Services Ombudsman.

Consumer organisations were requested to provide their own comments on the scheme. The comments of Consumer Organisations are given at Annex A. The three questionnaires are attached at Annexes B, C and D.

Responses to the Public Access Questionnaire – Barristers and Public Access Practitioners

In total, over 150 responses were received to the barrister questionnaires: about 95 from chambers and 70 from practitioners. The Public Access practitioners questioned practised in a variety of fields, taking on differing numbers of cases.

The responses have been summarised below. Where responses differ between public access practitioners and chambers to any great degree, that has been stated.

Range and Quantity of Public Access Work

Areas of Public Access practice were very wide, covering fields as diverse as Aviation and various types of Media Law. Most common, though, were Employment Law, as well as Landlord & Tenant, Contract, Personal Injury, Commercial/Chancery, Property and Intellectual Property.

Several responses from practitioners and chambers called for Public Access to be widened to include family and criminal work: in particular, road traffic and Magistrates' Courts work. One response strongly opposed widening the scheme to cover family and criminal work, citing the potential for professional embarrassment. Several responses also called for immigration work to be made available under the system to counter an existing discrepancy that permits non-practising barristers to take tribunal work if registered with the OISC without being instructed by solicitors, where barristers must be instructed under the current rules.

The numbers of cases taken on varied greatly. From the responses received from chambers, the most common situation seemed to be for chambers where 1-4 members had taken on 1-4 cases, then around the 8-10 members, 8-10 cases mark. A small number of sole practitioners had also taken on Public Access work.

In the case of Public Access practitioners, the most common situation was for Public Access work to take up 5% or less of the total workload over the past year. This usually involved less than 10 cases over the year. The second largest group was the 5-10% group, where less than 10 cases were the norm. Only a few practitioners had taken on large numbers of cases.

The Training Course

The training course was generally liked, especially by practitioners. It was stated to have good tutors, clear definitions of what a barrister could and could not do and good advice on financial management and when to advise the client to call in a solicitor. One practitioner suggested that it would help to include more information on the Money Laundering Regulations on the course.

Opposing opinions claimed that the course failed to tell the client what the barrister could and could not do, and that it was inadequate in preparing the barrister and warning him of the pitfalls of this kind of work.

Complaints

Two chambers claimed to have received complaints in the last year relating to Public Access work. One complaint was only described as being “through the Bar Council” (no further details were given); the other was from a client disappointed not to have received a continuing care letter. The Legal Services Ombudsman reports that she has not reviewed a single complaint regarding a Public Access case.

Number of Years’ Standing Required

At present, Public Access work cannot be taken by a barrister of less than three years’ standing.

Opinions varied on the capacity of barristers of less than three years’ standing to deal with Public Access work. The majority of opinions received supported the current rule. However, where specific comments were made under this heading, they tended to favour the restriction being tightened and the amount of standing required to carry out Public Access work being increased.

Two practitioner responses suggested lowering the restriction to 18 months or one to two years, and two chambers suggested that Public Access work could be done as soon as the barrister had completed pupillage.

One practitioner pointed out that many Public Access clients would already be seasoned litigators in their own right. Other comments suggested that more junior barristers could carry out Public Access work if another barrister of three or more years' standing were supervising. One response pointed to small claims work in credit management, which, it was suggested, would suit the Young Bar especially well. Another chambers suggested a test to be taken for those wanting to take up Public Access work, based on knowledge, maturity and experience. Similarly, another response proposed an exception to the three year rule for more mature barristers who have had experience of dealing with clients in business before they were called to the Bar.

Most common, though, were suggestions that the requirement be raised to five years (seven years in one case), for barristers to gain experience of dealing with clients. Two responses from chambers requested that CPD training be provided for this area.

Information for Lay Clients.

The guidance materials prompted a good deal of comments. There were complaints that solicitors and laymen did not understand how the Public Access system worked, and that lay clients did not properly understand what counsel could and could not do when instructed. Some comments suggested that lay clients had come directly to barristers after bad experiences with solicitors, and that where barristers had been obliged to "hand-hold" solicitors through areas of law in which they were not confident, clients would be better served by being able to instruct directly.

A number of comments from the Bar suggested that it was difficult to inform clients of the barrister's role and ambit in the case: one practitioner saw the letters as too negative and off-putting, focussing on the limits of barristers rather than their advantages to the client compared with solicitors. Another stated that the necessity to sign and return the client letter gave clients too much chance to default by failing to complete the paperwork properly and claiming that the terms were never fully explained. One suggestion was for a one-page letter with attached terms and conditions, while another suggested case record sheet templates. The most extreme response came from a chambers that called the literature "totally inadequate", claiming that it confused lay clients and did not help counsel.

Lack of knowledge of the scheme

Several comments suggested that solicitors and lay clients did not know enough about either the existence of the scheme or the way it worked. These responses suggested that the visibility of the Public Access scheme needs to be addressed, both on the Bar Council website and in advertising to potential

clients. The Legal Services Ombudsman's comments seem to support this view. The Ombudsman reports:

“Over the past 2 years or so I think it is generally agreed that there has been relatively little take up in Public Access cases. Indeed, I have not reviewed a single complaint concerning such cases. I feel it may be beneficial for the review to consider whether there is a need to generate more public awareness about the availability of Public Access which may hopefully increase the take up rate.”

One response suggested that the Citizen's Advice Bureau, government agencies, large companies and other potential lay clients should be informed of the scheme through targeted advertising.

One response expressed uncertainty about situations where the barrister may inadvertently end up handling the client's money where he has been accidentally overpaid.

Correspondence.

Above all, the issue of correspondence caused debate and concern. Communication tended to fall into two areas: Inter Partes Communication and Without Prejudice Communication.

Inter Partes Communication: Opinions varied as to whether the ban on *Inter Partes* communication completely precluded barristers from communicating by email, but a good majority of responses agreed that email is both widely used and acceptable. The prohibition on *Inter Partes* work was seen by a few respondents to completely exclude any contact with the opposing side, while others considered that it permitted email and face-to-face contact to differing degrees. The majority opinion was that counsel-to-counsel emails were acceptable and helpful for case administration work such as exchanging skeleton arguments, drafting orders and the like. However, clarification on this issue may well be needed, as the answers suggest that a very wide range of opinions exist, some being held very firmly.

It was generally felt that barristers doing Public Access work should be allowed to communicate more extensively with opposing parties than they would if conventionally instructed. However, a number of responses questioned how far this communication should extend and how the client should ultimately be able to control the case if such communication occurred.

Opinions to the contrary said that the client aspect provided a useful check to the barrister's range of activities; that difficulty could arise with the client not understanding instructions; and that the lack of a full secretarial team made it difficult for barristers to produce large amounts of correspondence.

Without Prejudice correspondence: Answers were more varied still when considering whether barristers should be allowed to conduct Without

Prejudice or open correspondence in a Public Access case. The more strongly-expressed (minority) views were that barristers should be allowed to produce Without Prejudice correspondence in Public Access cases. The reasons given for this viewpoint were that laymen should not be expected to produce Without Prejudice correspondence; that this would cut costs and time for the lay client; that barristers can judge when correspondence should come from the client or from them, as solicitors would do; and that while there is a statutory distinction between advocacy and litigation, it is an artificial one and does not realistically reflect the circumstances.

Several responses advocated complete openness in correspondence, but generally the idea of barrister-to-barrister correspondence was welcomed more than barrister-to-solicitor correspondence. Arguments against openness were that this would blur the lines between barrister and solicitor's responsibilities, and that the duty of care must ultimately remain with the client if the barrister is unavailable to do work for him (if he is in court on a specific day, for instance, and thus unable to act on the client's behalf for that time).

The survey suggests that, for Public Access work, many counsel are willing to take on some extra capacities, mainly regarding communication with the other side. Most do not advocate complete openness, but prefer counsel-to-counsel communication on administrative issues, generally by email. There is concern, though, that counsel may appear to be conducting litigation, especially if correspondence goes much further.

Drafting of correspondence: Several responses said that it was awkward, and sometimes puzzling to the client, for barristers to have to draft correspondence and let the lay client retype it on their own headed paper to send. This was described by one chambers as "old-fashioned". Also, it was suggested that being able to communicate more extensively would streamline the case and make it easier for documents and settlements to be drafted, which might have to be done to tight deadlines during the case. One practitioner reported that lay clients were disappointed to find that he could not send a strongly worded warning letter to the opposite side, as a solicitor might do where proceedings were likely, preventing the lay client from making use of the "weight" of the barrister's credentials.

Most practitioners seem to see counsel-to-counsel email as desirable and some as vital. They expressed some concerns about taking over work that was really meant for solicitors, and noted the general barrister-solicitor division. There was concern about not going too far into territory not meant for barristers, and some felt that correspondence should be restricted to that fitting the position of a specialist advocate. Where substantial communication arises, it was felt by some to be time to tell the client to call in a solicitor.

Responses to the Public Access Questionnaire – Lay Clients.

The second part of the BSB's assessment of the working of the Public Access scheme was the canvassing of opinions of lay clients who had used the scheme, carried out in June 2007.

A questionnaire was drawn up specifically to seek the opinions of lay clients. Emails were sent to all registered public access practitioners, requesting that they directed their public access clients to either the questionnaire attached to the email or the same questionnaire displayed on the Bar Standards Board website. The lay clients were asked to fill in the questionnaire and return it directly to the BSB as either an email attachment or a printed copy, thus ensuring that replies could be submitted entirely separately from the barrister. In total, eight responses were received from lay clients using the scheme.

The questionnaire was split into sections. The responses are summarised by section.

Background Questions

All but two of the respondents had used the scheme only once. Each of these uses was as an individual. One respondent had used the scheme approximately ten times, on behalf of a company. Another had used it twice, both as an individual and on behalf of a company.

The types of work undertaken were:

- Defence against 1975 Inheritance Act claim
- Pension appeal
- Civil litigation in County Court as defendant/Part 20 claimant
- Personal injury
- Property dispute
- Negligence claim against solicitors
- Civil (one case) and employment (another)

The respondent who had used the scheme ten times commercially had used it for:

- Litigation
- Legal advice
- Opinions
- Drafting and checking agreements
- Amending patents

The client who had used the service ten times had an LLB law degree. Only one of the other respondents had any legal training, which was described as "minimal – I am a quantity surveyor". The rest had no experience.

Under the scheme barristers provided advice on law and procedure, drafted documents (including defences, counterclaims, pleadings, Part 36 offers and skeleton arguments) and correspondence and carried out advocacy in court. Two responses left this question blank.

One response stated that the barrister was unable to represent the client in court as he was “required to be instructed by solicitors”. This is surprising, as the very purpose of the scheme is to permit instruction without solicitors. The response states that the case was lost when another barrister was instructed, but unfortunately gives no more information about the circumstances that led to this situation.

Publicity Information

The internet seems to play an important role in finding out about the scheme. Five responses cited research on the internet, one of them singling out the Bar Council’s website. One of these four had heard of the scheme from its launch and researched it further on the internet.

Another heard of the scheme from “a friendly solicitor”, another from the solicitor they had just dismissed. One response heard about the scheme from the barrister himself, another from a different barrister. The final response cited “another person”.

With regard to whether the scheme was sufficiently promoted, one reply did not know, two were left blank and five said that it was not promoted well enough.

Four respondents provided suggestions as to how the scheme could be better publicised. They were:

- Although advertising may not be particularly useful, PR would help, especially by telling the stories of people who successfully used the scheme.
- The Bar Council has been able to use newspapers and TV to advertise for some time.
- Solicitors should be obliged to tell clients that it is possible to deal directly with a barrister.
- I got the impression that solicitors far prefer to deal with other solicitors and that they would rather not promote or advertise the scheme. As a result the scheme should be promoted through the media and internet.

Understanding of the Scheme

When the Public Access scheme was introduced, guidance was produced for members of the public seeking to make use of it. The guidance explains the general rules on Public Access and the roles of barrister and client. The respondents were asked whether they received a copy of the guidance.

One respondent received a copy of the guidance from the barrister; another was directed to it on the barrister's website. One agreed that the guidance had been received, but did not explain who from. Two respondents were not sure if they had received it or not. One did not receive a copy of the guidance at all and one reply was left blank. The final respondent found it on the internet.

Four of eight found that the guidance explained the scheme in sufficient clarity. One stated that it was not at all clear. The other three did not answer this question.

Three comments were made as to improving the information. One felt that it was fine, another stressed that it was important that the guidance should be available on the internet. The third stated that more information should be given about exactly what a barrister could and could not do, and went on to say that had the client known that it was not possible to see the barrister in the trial, the client would never have instructed him.

With one exception, the client care letters were described as very clear, and all felt that they clearly explained the service that the barrister could provide. The differing comment described the letters as "Really confusing", citing the Bar Code of Conduct as being too restrictive. No suggestions were put forward for improving the client care letters.

Correspondence During the Use of the Scheme

The most popular methods of communication with the other side were letters (six responses) email (five) and telephone (three). One response did not give details as to the form of the correspondence. In six cases the barrister helped the client draft letters and/or paperwork needed in the case.

The Public Access Rules do not permit a barrister to write to the other side in the case. Lay clients were asked whether this caused them any problems, and whether they would rather that the barrister was able to do so.

Responses varied:

- I would have preferred the barrister to have been able to write directly: due to the limited way my barrister could assist I had to pass the matter to a solicitor, which caused me further loss and distress.
- I was capable of handling this myself and did not consider the barrister's intervention necessary.

- In some situations it would have been advantageous for letters to have come directly from the barrister, as it would have shown the other side that we were receiving good legal advice.
- We are very experienced in communication and hence this was no problem, but it could have bothered a large percentage of the population.
- Personally, this worked fine, although in some situations my barrister drafted the letters, which would have been obvious to a reader. I would rather that the letters could come directly from the barrister, to give them more “weight”.
- Because correspondence had to go through my barrister and then through me, it caused delays. I would rather than the barrister could have written directly to the other side.
- It was a big problem. If the barrister cannot not use his name on the correspondence, it makes no sense to have this option available.
- I was happy to write following my barrister’s advice. If I were not, perhaps I would have been better off employing a solicitor.

Clients communicated with their barristers through email (six comments), telephone (six), meetings (four), letters (three) and faxes (one). Six of the eight respondents found this arrangement either satisfactory or good, although one of these described it as “very satisfactory, but not up to my expectations”. One stated that the arrangement was satisfactory, but stressed that their barrister was a busy man. One left this question blank.

Lay Clients’ Role in the Case

All of the respondents felt that their role was clearly explained to them at the beginning of the case. All felt that their barrister’s role was explained clearly at the start of the case.

Five found that they could do what was expected of them without serious difficulty. One lay client found that the letters they had written on their own were not appropriate, and that the opponents did not take the case seriously even when a barrister became involved. Another client felt that although the lay client’s role was not intellectually challenging, it could be emotionally draining (this response related to a property case involving the breakdown of a relationship), and that some more explanation was at times required. The final response was “No comment: I could not understand the question”.

Five responses stated that there was nothing that could have made the client’s role clearer or easier to understand. Two made no comment, and another response highlighted the barrister’s inability to deal directly with the opposition, stating that it would have been much easier if the barrister were able to write directly to the opposite side.

Overall Satisfaction

All responses to this issue were broadly positive. The only negative note was from a client who, whilst identifying the scheme as “an excellent idea” felt that it was hampered by the barrister’s inability to write directly to the other side. Another response stated that, while satisfied with his barrister’s work, the client felt that the barrister was continually “showing difficulties in performing his role any further”.

The Public Access scheme places limitations on the services that barristers can provide to clients. The questionnaire asked whether clients were made aware of these limitations and whether they had any suggestions as to how the quality or range of the barrister’s service could be improved.

Seven responses were given. All but one were positive, but three noted the barrister’s inability to correspond directly with the opposition. One pointed out the difficulty in finding a suitable barrister who was part of the Public Access scheme. Another recommended that all restrictions on barristers who have completed pupillage be lifted with regards to carrying out Public Access work. Of these three, one reported that the opposing solicitor had been reluctant to deal with the barrister at all, in correspondence or at court.

All respondents would make use of the Public Access scheme in the future.

The final question asked clients to provide any other comments that would be of benefit to the review of the Public Access scheme. Two made no comment. The other six comments were as follows:

- It is a great service and has been very helpful.
- More barristers should be available to make use of the Public Access scheme easier.
- All barristers should be obliged to perform to the same exemplary standards as the barrister in my own case.
- It would be better all round if barristers were able to deal directly with the opposition. This could raise the chances of an early solution being reached. The opponents consistently wanted to deal with a professional rather than a layman.
- The Bar should ensure that the goals of the client and the barrister are aligned as closely as possible. The client needs matters to be concluded as quickly and cheaply as possible, while for a barrister going all the way to Court must surely be the best outcome, in terms of both money and personal satisfaction. I cannot see how an early out-of-court settlement could be satisfying for a barrister, but this is what the client always wants, and what should happen.
- I was surprised to discover that a barrister cannot deal with immigration matters directly. This is really necessary: as solicitors send their paralegals to immigration courts to save themselves money, I do not see why barristers could not send junior members of chambers to do this, so long as they have completed pupillage.

Barristers' and Lay Clients' Responses Compared.

The number of responses received from lay clients was far lower than that from barristers. Had every lay client responded, it is possible that different themes and sentiments might have become apparent. However, certain feelings were shared by almost all of the responses received. To judge from what was received, the Public Access scheme is welcomed by practitioners and clients alike, with a few important reservations.

Among lay clients, there was no clear distinction in opinion between those using the service for personal or commercial matters. That said, only one of the responses was from an entirely commercial client, and so it may be inappropriate to draw any firm conclusions from this. Judging by the range of cases covered and the level of satisfaction reported, no areas of law presented particular problems to the barristers in the scheme.

All the lay respondents were happy with the service they received. Complaints made tended to revolve around the inability of barristers to correspond directly with the opposite side, and a perception that the scheme was poorly publicised by the Bar.

Publicity

Both barristers and lay clients perceived a lack of publicity for the scheme, and suggested that solicitors and lay clients did not know enough about the existence of the scheme or its workings. One practitioner made mention of a solicitor refusing to deal with Public Access barristers at all.

Clients had difficulty not just in hearing about the scheme, but in finding barristers to take the work on. It was unanimously suggested by the client responses that the Public Access system was not advertised well enough. Suggestions were made that the Bar should put effort into more dynamic advertising of the system, and that solicitors should be encouraged/obliged to inform the public of its existence.

The comments of the Legal Services Ombudsman suggest that general awareness of the scheme is low.

Several of the responses suggested that they had heard about Public Access from other people or by chance: only one response identified the Bar Council as the source for finding out about the scheme.

Correspondence

The difficulty of making potential clients aware of the scheme and explaining it to them was mentioned several times by practitioners. It may be that the precise capabilities of barristers and solicitors are not well known to the public

on the whole, but several responses from the Bar called for better advertising of the service and clearer explanatory letters – even though only one of the client responses said that the letters needed improvement. Several lay clients wanted services that the system does not currently permit, like the capacity to send warning letters on chambers’ headed paper. The prestige and “weight” of being visibly represented by a barrister in correspondence is clearly missed by clients.

To judge from the responses to both questionnaires, the current rules on communication appear to be obeyed, but not in an especially rigid manner. Most barristers in the scheme settle for a middle ground of using email to discuss the formulation of orders and/or to exchange skeleton arguments with opposing counsel - although some take a much more or less lenient approach. There are some strong opinions either way – one registered practitioner described the idea that counsel might not communicate via email as “nonsense” – but the majority of views from the Bar accept the use of email for matters of case progression, but are rather more wary in approaching more open correspondence, especially with solicitors. As seen, this causes problems with lay clients who would rather that the barrister could litigate directly on their behalf.

The Guidance Material

Numerous responses from barristers concerned the way that the Public Access system is presented and understood by lay clients. Indeed, comments made by one lay client seemed to suggest that the client had not understood the exact limitations of the scheme before making use of it. However, the rest of the lay respondents felt that the roles of client and barrister were explained well, and that the limitations of the scheme were clearly set out.

The material itself was unanimously praised by the lay clients, even though some barristers felt it was insufficient or – in a few cases - excessive. Only one of the eight lay clients felt the need to call in a solicitor to deal with these limitations: this particular respondent had experienced problems with being taken seriously as a litigant by the opposing solicitors throughout the case.

Standing and Experience for Public Access Work (barristers only)

The present rules regarding standing and experience for conducting Public Access work also gave rise to a range of views. (This issue was not mentioned in the questionnaire for lay clients). Most barristers seemed to be happy with the requirement for three years’ experience, although a small minority preferred five or more, and a smaller minority still would allow fewer years’ standing, generally limited to specific types of work or barristers with other career experience.

Overall Satisfaction

Satisfaction with the scheme among lay clients was quite high. The lay client responses suggest that the main perceived problem with the Public Access

scheme was that it did not go far enough in what it allowed barristers to do. The performance of barristers was felt to be good, even though they were thought to be overly limited in their remit under the scheme's terms. Perhaps it is worth noting that no response speaks negatively of the competence of the individual barrister, even in a situation where the case was lost: if a barrister's performance was felt to be bad, perhaps satisfaction with the scheme itself might not be so high.

Responses from barristers tended to approve of the scheme as well. Only one reply from a Public Access practitioner stated complete dissatisfaction with the scheme, to the extent of making no money from it. Another, from a chambers, depicted the system as a shambles and the literature as insufficient, stating that every Public Access case taken by that set had incurred problems. On the other hand, one set doing non-contentious IP and Information Technology work reported that the scheme was greatly appreciated by universities and public sector clients, and had permitted new services to be offered by the chambers, some of them *pro bono*.

Other responses from the Bar alleged a variety of hidden costs. These included the time spent writing correspondence without a secretarial team, the ability of opposing solicitors to waste barristers' time by deluging the client in letters and the alleged capacity of solicitors to foist especially difficult clients onto barristers through the Bar Council. One practitioner wondered if the whole scheme was pushing barristers into a role inherently better suited to solicitors and several others expressed similar feelings with regard to the issue of opening up correspondence between counsel and the opposite side.

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ANNEX A

Consumer Organisations.

The following responses were received from consumer organisations in response to the questionnaire sent to chambers and Public Access practitioners.

Mark McLaren of Which?

Which stated that it had no intention to respond on the Public Access. *Which?* had no detailed comments to make because, as far as was known, it had no experience of using the current Public Assess rules. *Which?* stated that it would be interested to know what the take-up of the new rules has been, and which areas have proved popular. *Which?* was interested in finding out whether there are plans to expand the Public Access rules to cover areas that are not currently part of the scheme.

The Bar Standards Board Consumer Panel

The Panel expressed its disappointment that barristers and chambers were consulted before Public Access clients. This, the Panel believed, gave the impression that the opinions of barristers mattered more than those of lay clients. The Panel suggested that questionnaires could be sent to lay clients through chambers, and that some specialist lay groups (trade unions, etc) could be contacted for their views.

The Panel considered the existing literature to be overly complex and likely to encourage lay clients to go to solicitors for simplicity's sake instead. The Panel believed that any review should look at improving the documentation and consumer-testing it to make it more comprehensible to users. The Panel also believed that the complaints procedure should be included as a matter of routine as part of the Client Care letter.

The National Consumer Council

The NCC stated that being a policy organisation, it had no intention to comment on the readability of the guidance. It hoped that the BSB would discuss the scheme with lay clients as well as barristers.

In its response the NCC called for the Public Access rules to be further relaxed or entirely removed. It set out as its starting point that restrictions should be removed if they do not benefit consumers.

The NCC argued that by limiting the number of competing lawyers, the restrictions prevented consumers from enjoying the full benefits of competition. Under the current Public Access system consumers could end up paying too much, as they would have to involve two lawyers rather than one if, having engaged a barrister, their case then developed in such a way as to fall outside the Public Access rules. This would increase costs and perhaps dissuade consumers from using the scheme to begin with.

The NCC stated that lines are currently blurred between the Bar and solicitors. A barrister cannot sell his services directly to clients, which puts him at a commercial disadvantage to a solicitor. The NCC went on to say that it could not see why barristers should be prevented from developing work in litigation if they wish to operate in this field.

The NCC was unconvinced by arguments that further openness would lead to weaker advocacy. It doubted that the change on the market would be that drastic. It believed that the emphasis of any decision should be on providing quality legal services, not keeping to traditions.

Finally, the NCC noted comments made by the OFT in 2003, stating that training and supervisory requirements should not go beyond what is necessary to ensure that a barrister is able to undertake Public Access work competently.

The Legal Services Ombudsman

The Ombudsman stated that it was generally accepted that relatively little use of the Public Access system had occurred over the last two years, and pointed out that she had received no complaints at all regarding Public Access cases. The Ombudsman suggested that the review should consider raising public awareness in the scheme through publicity.

The Ombudsman considered that it would be beneficial for the review to consider the entire aspect of the provision of client care in the light of the past two years' experience.

At the beginning of the scheme, in 2004, the Ombudsman raised questions about the need to train barristers' clerks in client care, and as to whether there was scope for separate research to be undertaken about the Public Access scheme. The Ombudsman suggested in the response to the questionnaire that there would be merit in these questions now being addressed.

Finally, the Ombudsman reiterated that, where there was a falling out between barrister and lay client, there would be no solicitor to act as mediator between them both. In such a situation, she believed that it would be helpful for the documentation to give more information on the subject of complaints. It could give details on the sort of issues that the barrister's chambers own complaints procedure could cover, and the time it would take for this to happen. The

Ombudsman suggested that the review could investigate the existing experience of chambers in this area.

ANNEX B

Review of the Operation of the Public Access Rules

Questionnaire – Chambers

A copy of this questionnaire has been sent to both the Head of Chambers and the Senior Clerk.

Please return the questionnaire in the enclosed freepost envelope.

Thank you very much for your assistance.

1. a) How many members of Chambers are willing to accept public access work?

- b) How many members of Chambers have already undertaken any public service work?

2. *In what areas of practice does Chambers undertake public access cases?*

3. Approximately how many public access cases has Chambers undertaken in the last 12 months?

4. How many complaints in the last year have Chambers received that relate to public access work?

5. If you have received any public access complaints, please provide details of the two most common complaints received.

6. Is the public access guidance literature produced by the Bar Council:

Easy to understand: Yes No
Sufficiently explanatory Yes No

If you answered no to any of the above, how could the guidance be improved?

7. Are the public access client care letters produced by the Bar Council:

Easy to understand: Yes No
Sufficiently explanatory Yes No

If you answered no to any of the above, how could the letters be improved?

8. Has Chambers received any complaints or comments from lay clients about the public access client care letters and/or guidance?

Yes No

If yes, please provide further details.

If you have considered the Bar Council draft client care letters to be less than fully satisfactory, and have developed your own draft client care letters, the Review would greatly appreciate a sight of anonymised sample client care letters to illustrate the improvements which you consider you have been able to make.

9. Has Chambers experienced any difficulties with the application of the public access rules?

Yes No

If yes, please provide details and make suggestions for how the rules could be amended to address these difficulties.

10. Has Chambers experienced any difficulties in relation to costs orders in public access cases?

Yes No

If yes, please provide details and make suggestions on how these difficulties could be addressed.

11. Under the present Rules eligibility to undertake public access work commences as soon as a barrister is of 3 years standing. Would you favour any, and if so, what, changes?

Yes No

Suggested changes:

12. The Code does not permit a barrister to conduct 'inter-partes' work (for example the conduct of correspondence with an opposing party).

a) In your experience is this being regarded by barristers today as wholly precluding barristers from communicating with opposing barristers by email, and, if not, what types of communication are occurring?

b) Do you consider that barristers acting on public access should be permitted to conduct more extensive communication with an opposing party, than when instructed on the conventional basis?

c) If the answer to b) is yes, should the conduct of correspondence be permitted in:

'Without prejudice' correspondence Yes No

Please explain the reasons for your answer.

'Open' correspondence Yes No

Please explain the reasons for your answer

Can a different case be made for:

a) Counsel to Counsel e-mail or other correspondence?

Yes No

Please explain the reasons for your answer.

b) Counsel to Solicitor correspondence?

Yes No

Please explain the reasons for your answer.

13. Are the limitations on the areas of work that are permissible under the public access rules justifiable (most family work, most criminal work and all immigration and asylum work is not permitted)?

Yes No

If no, please set out the type of case(s) for which, in Chambers' view, the limitation should be lifted and explain why.

14. If Chambers does not undertake public access work, are there any amendments to the operation of the rules, such as the making of

certain types of cases permissible, which would make Chambers re-consider its position on public access cases?

Yes No

If yes please provide details.

15. Please use the space below to make any other comments on public access and its operation.

That is the end of the questionnaire. Thank you very much for taking the time and trouble to fill it in. Please return the questionnaire in the stamped addressed envelope supplied.

ANNEX C

Review of the Operation of the Public Access Rules
Questionnaire – Public Access Practitioners

Our records indicate that you are registered as a public access practitioner, we would be grateful therefore if you could complete the attached questionnaire on the operation of the public access rules.

Please return the questionnaire in the enclosed stamped and addressed envelope.

Thank you very much for your assistance.

13. In what areas of practice do you undertake public access work?

14. What percentage of your workload over the last 12 months has been public access work?

15. How many cases does this equate to?

16. Did the public access training course adequately prepare you for public access work?

Yes No

If yes, what particular aspects of the course impressed you?

If no, how could the course be improved?

17. Is the public access guidance literature produced by the Bar Council:

Easy to understand Yes No

Sufficiently explanatory Yes No

If you answered no to any of the above, how could the guidance be improved?

18. Are the public access client care letters produced by the Bar Council:

Easy to understand Yes No

Sufficiently explanatory Yes No

If you are answered no to any of the above, how could the letters be improved?

19. Have you received any complaints or comments from lay clients about the public access client care letters and/or guidance?

Yes No

If yes, please provide further details.

If you have considered the Bar Council draft letters to be less than fully satisfactory, and have developed your own draft client care letters, the Review would greatly appreciate a sight of anonymised sample client care letters to illustrate the improvements which you consider you have been able to make.

20. Are the limitations on the areas of work that are permissible under the public access rules justifiable? (Most criminal work, most family work and all immigration and asylum work is not permitted)

Yes No

If no, please set out the type of case(s) for which, in your view, the limitations should be lifted and explain why.

21. Have you experienced any difficulties with the application of the public access rules?

Yes No

If yes, please provide details and make suggestions for how the rules could be amended to address these difficulties.

22. Under the present Rules eligibility to undertake public access work commences as soon as a barrister is of 3 years standing. Would you favour any, and if so, what, change?

Yes No

Please give reasons for your answer.

23. Have you experienced any difficulties in relation to costs orders arising in public access cases?

Yes No

If yes, please provide details and make suggestions on how these difficulties could be addressed.

12. The Code does not permit a barrister to conduct 'inter-partes' work (for example the conduct of correspondence with an opposing party).

a) In your experience is this being regarded by barristers today as wholly precluding barristers from communicating with opposing barristers by email, and, if not, what types of communication are occurring?

b) Do you consider that barristers acting on public access should be permitted to conduct more extensive communication with an opposing party, than when instructed on the conventional basis?

c) if the answer to b) is yes, should the conduct of correspondence be permitted in:

'Without prejudice' correspondence Yes No

Please explain the reasons for your answer.

'Open' correspondence Yes No

Please explain the reasons for your answer

That is the end of the questionnaire. Thank you very much for taking the time and trouble to fill it in. Please return the questionnaire in the stamped addressed envelope supplied.

ANNEX D

The Questionnaire for Lay Clients of the Public Access scheme.

The questionnaire below was sent by email to all registered Public Access practitioners. They were encouraged to forward it to their Public Access clients or to direct them towards the BSB website, where the questionnaire was available to be completed. The answer-boxes were expandable, allowing for longer responses. The period of consultation ran from the 20th of June to the 1st of August 2007.

Background Questions

Have you used the Public Access scheme to instruct a barrister? *If yes, how many times have you used the Scheme?*

In what capacity did you use the scheme (e.g. as an individual, on behalf of a company, on behalf of a representative body, other, etc)?

In what sort of case(s) have you instructed a barrister on under the Public Access scheme?

Do you have any legal training? *If yes, please give details.*

What was the main role of your barrister in these cases (writing correspondence for you to send, providing you with advice, carrying out advocacy in court etc)?

Publicity Information

How did you hear about the Public Access scheme?

Do you feel that the scheme is advertised and promoted well enough?

If not, how do you feel that the scheme's advertising and promotion could be improved?

Understanding of the Scheme

When Public Access was introduced, guidance was drafted for members of the public who wished to use the scheme. The guidance explains the general rules on Public Access including, which cases can be conducted under the Public Access scheme and the role of the barrister and the client in public access. Did you receive a copy of this guidance?

Did the guidance explain the scheme sufficiently clearly?

Are there any improvements that could be made to the information provided about the Public Access scheme?

How clear were the client care letters that you received from your barrister?

Did the client care letters clearly explain the service that your barrister could/would provide to you?

Are there any improvements that could be made to the barrister's client care letters?

Correspondence during your use of the Scheme

How did you correspond/communicate with the other side during the case?

Did your barrister help you to draft letters and/or any other paperwork needed in the case?

The Public Access Rules don't permit a barrister to write to your opponent in your case. Did this cause you any difficulties? Would you have preferred your barrister to have been able to do so? *Please provide reasons for your answer.*

How did you communicate with your barrister during the case e.g. meetings, telephone, letters?

Did you find this satisfactory? *If not, please give details.*

Your role in the Case

At the start of the case, was your role clearly explained to you?

At the start of the case, was your barrister's role clearly explained to you?

Did you find that you could do what was expected of you without serious difficulty? *If not, please give details.*

Is there anything you can think of that would have made your role clearer/easier to carry out?

Overall Satisfaction

Overall, did you get the service that you expected to receive? *If not, please give details.*

The Public Access scheme places limitations on the service barristers can provide to clients. Were you aware of these limitations and is there anything you would suggest that could improve the quality or range of service that the barrister can give?

Would you use the Public Access scheme again?

Do you have any other comments that you wish to make that you feel would be of benefit to the review of Public Access?

Thank you for taking the time to complete this questionnaire. Please return to Tfrost@BarStandardsBoard.org.uk by 1 August 2007.