

CURRENT GUIDANCE

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 members of the public, also known as lay clients (the “client”), can use the public access scheme 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 Bar Standard Board’s (BSB) website at the following link:

<https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-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 BSB Code of Conduct obligations.

What is Licensed Access?

5. In 1990 a number of professions were recognised as entitled to instruct barristers without a solicitor. 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. All these arrangements are called “Licensed Access”.

A. Initial contact and acceptance of instructions

6. You should 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 two categories are entitled to instruct in this way:-
 - a. Members of recognised professional associations : a list is available from the BSB website – see the Schedules to the Licensed Access Recognition Regulations: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>.
 - b. Individuals who have been given licences or members of organisations which have group licences: a list is available from the BSB website – see the Licensed Access Recognition Regulations page: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>.

Licensed access clients

7. If the client is exercising an individual licence, you should request that a copy be supplied or refer to the list of licensed access clients published on the BSB website. If the client presents themselves as a member of a recognised professional association, check with the professional association concerned or in an appropriate professional or trade directory.
8. You should check the enquiry with 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 the client notifying them that the case is accepted, the terms on which it is accepted and the basis upon which the barrister is to be paid (if it is wished to withhold delivery of paperwork until the fee is paid, set this out expressly in the letter).

Public access clients

10. Check whether the intended barrister:
 - a. is properly qualified with a full practising certificate;
 - b. has undertaken BSB approved public access training; and
 - c. has notified the Bar Council (acting by the BSB) that they will accept public access work.

11. You should check the enquiry with the intended barrister to ascertain whether the barrister considers it proper to accept the case on a public access basis. 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. A barrister may accept public access instructions in any area of practice. However, it should be noted that the restriction on the conduct of litigation will be relevant if they have not been authorised by the BSB to undertake litigation. Barristers should not accept cases where there is an expectation that they will carry out litigation if they are not authorised to do so. It is suggested that in the event of any uncertainty you should contact the Bar Council's Ethical Enquiries Service: <https://www.barcouncil.org.uk/supporting-the-bar/ethical-enquiries-service/>.
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 Aid Agency 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 they 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 www.gov.uk website for further information:

<https://www.gov.uk/check-legal-aid>
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 way. 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. You 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. The model client care letter can be found on the BSB's website at:

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

18. Provided the barrister has promptly written to the client in the terms of the model letter they will have complied with the notification requirements set out in rC124 of the BSB Handbook. Where the client has previously instructed the barrister in respect of the same matter it may well be unnecessary for the barrister to provide a full client care letter in respect of every new instruction received. Barristers must still ensure that the fundamentals of the client care letter are set out in respect of each new instruction i.e. the work that is to be undertaken, the cost and the payment mechanism. Other matters which the barrister is required to inform the client about, such as the barrister's limitations with respect to litigation (if relevant), how to complain and the fact the barrister may have to withdraw can be covered by referring the client to the original client care letter.
19. 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.
20. If the client is acting as an intermediary for the ultimate client, ensure that the barrister not only sends an appropriate client care letter to the intermediary, but also an appropriate letter to the client.

B. After the case has been accepted (both licensed access and public access)

21. 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.

22. 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 the work has been completed (both licensed access and public access)

23. Maintain the case record on the Chambers computer of all relevant actions and payments, as with a solicitor referral case.

24. Keep in an ordered filing system copies of letters to and from the barrister regarding acceptance of instructions and fees.

25. Remind the barrister to archive necessary papers for at least 7 years. 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.