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Client Contract and Care Letter

Client's Name and address: [clerks complete]

Date : [clerks complete]

Case Reference: [clerks complete]

Dear **[clerks complete]**

Thank you for your completed Questionnaire which we have now received in our offices which we call 'Chambers'. You can find guidance from the Bar Standards Board explaining how the Public Access scheme works attached below.

I would be pleased to accept instructions from you on the terms set out in this letter. It is important that we both understand what those terms are. They will form a legally-binding contract between us. It is also important that you understand at the outset that I cannot undertake work funded by the Legal Aid Agency unless you instruct me through a solicitor. If you want to discuss "Legal Aid" before deciding whether to instruct me, then please contact us.

If you agree with these terms then please sign a copy of this letter (the 'Letter of Agreement') and return it to my Chambers. We will not have a binding contract until we receive this back unamended and with your signature on it.

I think it would be helpful if we set out the work I will carry out for you and the fees that you will be charged.

The Work I will carry out:

- (i) you are instructing me to carry out the following work:... *[clerks complete]***
- (ii) I undertake to perform these services by:*[clerks complete]***

If further or subsequent work is needed on this matter, and I am available and able to do that work there will need to be another Letter of Agreement between us which again you would have to sign and return to us before I can carry out that work.

My Fees for this Work

- (i) My fee for the advisory and drafting work described above will be a fixed fee of £*[clerks complete]* plus VAT. You and I agree I will not send the work until you have paid the fee, although you will become liable for my fees as soon as any work is done.**
- (ii) My fee for accepting the instruction to appear as an advocate on the occasion described above will be £*[clerks complete]* plus VAT. You and I agree that I will not attend the hearing unless you have paid the fee, although you will become liable for my fee for attending with effect from *[clerks complete]*. This is because I have to book your hearing in my diary and I will therefore have to turn down any other work for that day/time. If for any reason the case takes longer than expected, I will charge an extra fee of £ *[clerks complete]* plus VAT per day;**
- (iii) At the moment I do not know how much work will be involved in your instructions. As a result I cannot quote you a fixed fee at this stage. I will therefore charge you on a time basis at £ *[clerks complete]* per hour plus VAT. I will not carry out work that will cost you more than £ *[clerks complete]* VAT in total without your authority. When I have reached that limit, or the work is finished, my clerk will contact you and tell you how much the fee is going to be. You and I agree that I will not send the work until you have paid the fee.**

Your Right to Complain

If you are not happy with the service or the work that you receive my Chambers has a complaints process that you may follow. You may ask for a copy, if you would like to see it. More on this topic is set out at the bottom of this letter.

Please read this letter and the terms carefully and in full. If you have any questions, please do not hesitate to ask. If you are happy for me to take on this work and agree the terms then please sign the enclosed copy of this letter in the space provided and return it to Chambers.

Right to Cancel:

You have the right to cancel this contract/Agreement within 14 days without giving any reason.

The cancellation period will expire after 14 days from the conclusion of the contract/Agreement: that is the day upon which we receive your signed copy of this Agreement.

To exercise the right to cancel you must inform us, using the details at the top of this contract/Agreement, of your decision to cancel this contract by a clear statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model cancellation form, but it is not obligatory.

To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

Effects of Cancellation

If you cancel this contract/Agreement, we will reimburse to you all payments received from you.

We will make the reimbursement without undue delay, and not later than 14 days after the day on which we were informed about your decision to cancel the contract/Agreement.

We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have specifically agreed otherwise with us. In any event you will not incur any fee for reimbursement.

As this is a service contract, if you requested me to begin the performance of services during the cancellation period, you shall pay us an amount which is in

proportion to what has been performed until you have communicated to us your cancellation from this contract/Agreement, in comparison with the full coverage of the contract/Agreement.

My Terms

1. I am the only person you are instructing and I will personally do all the work needed under this arrangement. I am a sole practitioner although I practise with other barristers from a set of Chambers. A set of Chambers is a practice where a collection of independent, self-employed barristers share premises and administrative services.
2. We employ specialist clerks who take our bookings, manage our diaries, collect and agree our fees and answer your queries as far as they can. They are not legally-qualified and cannot answer legal queries.
3. I have carefully considered the instructions you have given me and I consider that I have sufficient experience and competence to carry out the work.
4. If for any reason I cannot carry out all of the work you are instructing me to do, or if I want to suggest another barrister (instead of me, or as well as me) carries out the work for you, I may propose this to you. However, another barrister will not carry out work for you unless and until you have agreed to this.
5. There may be times when my professional commitments, other cases in court for example, clash with the work I am doing for you. If I identify a possible clash of commitments and I am unable to work your case I will do my best to help as follows:
 - (i) warn you as soon as possible and ask you how you would prefer to continue. As a result, it would be helpful if you would give me a telephone number where I (or my clerks) will always be able to contact you. I am an advocacy specialist and am in court most working days of the week. Sometimes a case will run over into the next day when it was not scheduled to do so. If this happens we will often not know that we cannot cover your work for the next day until the afternoon before;
 - (ii) if I cannot cover your work and subject to availability I will suggest another barrister within my Chambers (of a suitable level of seniority and expertise) who is willing to accept your case under the same terms as this Agreement. You would then need to decide whether you wanted to instruct that

- barrister. We have qualified as a team to take Public Access work so that we have more chance of providing assistance in such circumstances;
- (iii) if there is no other barrister in our Chambers who can help or whom you wish to help you then my clerks or I will help you to find a barrister from another set of Chambers to assist;
 - (iv) my clerks or I will discuss with you the cost of using another barrister.

The work I will carry out

- 6. The work you are instructing me to carry out is set out above.
- 7. If further or subsequent work is needed on this matter and I am available and able to do that work, there will need to be another Letter of Agreement between us which again you would have to sign and return to us before I can carry out that work.

The range of work I can carry out

- 8. Barristers advise on the law, draft certain documents for clients to use and appear on behalf of their clients before Courts or other organisations. Barristers do not handle client money in any way or undertake administrative management of case proceedings before a Court. We cannot conduct litigation for you and in that way we are different from solicitors.
- 9. Here are some examples of how this works in practice:
 - (i) I can appear on your behalf to argue your case at Court;
 - (ii) I can advise you in conference;
 - (iii) I can draft letters on your behalf;
 - (iv) I can draft some formal court documents for the judge or court or other organisations, such as chronologies or a skeleton argument;
 - (v) I can advise you on whether you need expert evidence and on the choice of a suitable expert. Expert evidence is about a professional, scientific or technical matter provided by an individual with expertise in that area. I cannot instruct that expert for you. I can help you to draft the letter you may use to instruct the expert yourself;
 - (vi) If you need a witness statement from someone who may give evidence to the court in your case, then I can draft that statement from what you tell me they are going to say, or I can help you finalise a statement you or someone

else has drafted. I cannot interview your witness to see what they are going to say. I cannot help you to gather evidence;

- (vii) Although I can draft some court documents I usually cannot serve them for you on other parties or file them at court. You will have to do this. Serving documents is the process by which papers relating to a case are put before a court or tribunal and the parties e.g. in individuals or organisations involved in the case.
 - (viii) I cannot “go on the court record” or provide an address to the court to accept service of documents for you on your behalf. You will remain on the court record as acting in person as I am not allowed to conduct your litigation for you. You must provide your own address to the court as “address for service” of documents sent to you by other parties or the court.
10. As you are instructing me without a solicitor, you must be sure that:
- (i) you are able to do whatever is necessary for those matters which I cannot deal with for you; OR
 - (ii) you have made an arrangement with another person of suitable competence to do these things for you.

Circumstances in which I may not be able to work for you

11. As a barrister I must follow the Bar Code of Conduct. The Code requires me to consider whether a solicitor needs to be instructed in your interests or in the interests of justice. If there comes a point at which I consider that you need a solicitor then I will no longer be able to act for you other than on the instruction of a solicitor by you (who may instruct me, on your behalf, to continue with the case). If I foresee that situation arising I or my clerks will give you as much notice as possible. The Code is available here:
https://www.barstandardsboard.org.uk/media/1553795/bsb_handbook_jan_2014.pdf.

Legal Aid

12. It is possible that you may be eligible for public funding or “Legal Aid” as it is usually called.

13. However as a barrister I cannot do legal aid work unless I have been instructed by a solicitor. If you want to talk to someone in more detail about getting legal aid you should contact a solicitor who carries legal aid work. You can find out more information on the DirectGov website:
www.direct.gov.uk/en/Governmentcitizensandrights/GettingLegalAdvice/index.htm.
14. If you wish to be assessed for Legal Aid you can call the Community Legal Advice on 0845 345 4345 or use its online legal aid calculator at
www.legalaidcalculator.justice.gov.uk.
15. They can provide advice about family, debt, benefits, housing, education and employment problems.
16. If you do not qualify for public funding or "Legal Aid" then you might like to consider whether you have any insurance policies that might cover your legal fees. In particular, you should look at your home contents insurance policy because these often contain such cover. Alternatively, you can obtain a loan to cover legal fees (there are companies specifically designing packages as a result of the abolition of legal aid in many areas). You may also wish to consider whether the fees may be paid by someone else.
17. At present I cannot work for you if I consider you might be eligible for public funding even if you do not wish to access public funding.
18. I can advise and represent you if :
 - (i) you make an informed decision not to seek public funding;
 - (ii) you make an application for public funding but that is rejected;
 - (iii) you do not wish to take up the offer of public funding (you might feel the level of contribution is too much, or you might not want to be left having to pay it back at the end of the case).
19. By signing these terms you confirm that you have been informed that you may be eligible for public funding and where you can find further information about it. You are choosing to instruct me without the benefit of any public funding that may be available to you.

My availability

20. I carry out all of my work personally and so there will be times when I am not available to you. For example I am in Court most days of the week and will be unlikely to be available for telephone calls or to answer e-mails

immediately, other than those scheduled in advance through my clerk and as covered by our Agreement. I may be able to answer a telephone call or e-mail if I happen to be out of Court but more likely than not I will be in Court for other clients so I will be unable to return calls or reply to e-mails until later that day, or maybe even the next day.

My Fees

21. My fee for accepting the instruction to represent you will be as set out above. You and I agree that I will not prepare for it unless you have paid this fee in advance.
22. Once you have paid the fee you have paid for me to prepare and undertake the work as set out above. Once the fee is paid it is non-refundable save during the cancellation period (see above).
23. Under this Agreement you are responsible for paying my fees, even if somebody else provides the money to you.
24. If you owe me any fees which have not been paid in advance for whatever reason, and do not pay them for more than 3 months after the date on the fee note which my clerks send you, interest will be payable at 2% above Barclays bank base rate from 28 days of the date on the fee note.

Documents

25. You and I agree that :
 - (i) I am entitled to keep copies of any documents you give me for my own professional records; and
 - (ii) I will return all of your original documents to you when I have carried out the work you have instructed me to do unless we agree otherwise.
26. I would prefer not to hold original documents. I would very much prefer you to provide me with copies of all documents that I should see. Unless expressly agreed otherwise, I shall be entitled to mark such documents in any way which may assist me in carrying out your instructions. I may ask to see an original but I would prefer not to keep it. I may not need documents that you give me. I may need to see documents that you do not give me.
27. If you sign this Agreement and I work for you I am likely to need the following:

- (i) any trial bundle that has been prepared for any hearing which is covered by this Agreement;
- (ii) copies of all offers to settle from the other party or parties involved in your matter, be that settlement of some or all of your dispute;
- (iii) copies of all statements with their exhibits filed at Court in the case (including Forms E in financial remedy matters) if they are not in a trial bundle;
- (iv) all court orders that have been made in proceedings in which I will act as your advocate or about which I am advising you, especially the notice of proceedings about any hearing covered by this Agreement and any directions given by the court.

General obligations

28. The information which you give me will be received in professional confidence. This means I must maintain any confidentiality of any documents you give me or share with me and can only tell others about it if you give your consent for me to do so. The only exception is that statutory and other legal requirements may mean that I have to disclose your information to governmental or other regulatory authorities, or in some cases even the Court, without your consent and without telling you that I have done that or am going to do that. Statutory and legal requirements are rules or regulations that an individual must, by law, follow.
29. This contract or Agreement will be governed by English Law and any dispute will be subject to the jurisdiction of the English Courts. Jurisdiction means the power and authority of a court or tribunal to determine the outcome of a case and impose sanctions or penalties on those involved.

Complaints

30. I hope you will be happy with the professional services that I provide. However, if you are not satisfied, you should first refer the matter either to me or to my Chambers in line with my Chambers' complaints procedure. This is attached below.
31. If you are not happy with my reply or Chambers' reply then you may contact the Legal Ombudsman. This is a free, impartial and independent service set up by the Government which deals with complaints about the service you have received.

32. You must complain to the Ombudsman within 6 months of receiving a final response from myself or from my Chambers (as long as you are notified of your right to complain and the 6 month time limit). A complaint to the Ombudsman must also not be made more than 6 years after the act or omission complained about or not more than 3 years from the date when you should reasonably have known there were grounds for the complaint.

The Ombudsman can be contacted for further details at :

Legal Ombudsman

PO Box 6806

Wolverhampton

WV1 9WJ

E-mail : enquiries@legalombudsman.org.uk

Telephone : 0300 555 0333

www.legalombudsman.org.uk.

A guide to the Scheme Rules effective for 1st February 2013 is at :

<http://www.legalombudsman.org.uk/downloads/documents/A-guide-to-our-revised-Scheme-Rules.pdf>.

Client Signature:

Counsel Signature:

Encs :

Model Cancellation form

Complaints Policy and Procedure

Bar Council Guidance for Lay clients on Public Access

Model Cancellation Form

To:

Insert Barrister's Name:

Octagon House Chambers, 19, Colegate, Norwich NR31BN;

clerks@octagonhouse.co.uk.

I/We hereby give notice that I/We cancel my/our contract of sale for the supply of the following service:

I concluded the Agreement/contract by signing it on: *insert date*

Name of consumer(s), (*your name*)

Address of consumer(s), (*your address*)

Signature of consumer(s) : (*please sign*)

Date

Complaints Procedure and Policy

A complaint pursuant to this procedure may be made by someone who is not a Member or employee of Chambers or by a Member of Chambers or an employee. There is a written grievance and disciplinary procedure for employees. There is a written grievance procedure for Members of Chambers. This complaints procedure is always followed where any concern is raised suggestive of an infringement of the equal opportunities and harassment policy. The equal opportunities policies form will also be completed where necessary.

1. Chambers treats as a complaint any expression of dissatisfaction to which a client or other person would reasonably expect a response or by which it is clear that a system or procedure may not be in effective operation. Parties making a complaint in good faith will not be discriminated against by virtue of their having made a complaint in good faith. In so far as is possible and appropriate the details of the complaint and complainant are kept confidential. Professional clients are informed that Chambers operates a complaints procedure and that any complaint should be addressed to the senior clerk or to the Head of Chambers and that a copy of the complaints procedure is available on request.
2. The Head of Chambers has overall responsibility for the complaints procedure.
3. If the senior clerk or any Member of Chambers or any member of staff is made aware of the existence of a complaint, the details will be recorded and passed to the Head of Chambers and Quality Manager who will ensure that this procedure is followed and that complaints records are made and retained. The complainant is told that this will happen. The barrister(s) and/or members of staff about whom a complaint has been made are informed.
4. The Head of Chambers will notify the complainant, as soon as possible and within 7 days, that the complaint is under investigation and will give a time-scale for further contact. If the complaint has not been reduced to writing,

written details of the complaint are requested. Where necessary a copy of this complaints procedure will be supplied.

5. The Head of Chambers will carry out or cause to be carried out by the Equal Opportunities Officer any necessary investigations and provide all relevant parties with the opportunity to state their opinions on the circumstances of the complaint.
6. The Head of Chambers and Quality Manager will determine whether the complaint is justified and whether remedial action is necessary. The Head of Chambers will inform the complainant that the complaint has been investigated and has been either
 - found not to be justified giving reasons; or
 - found to be justified, giving reasons, and explain any remedial action proposed and the right in the event of continued dissatisfaction to pursue the complaint with the Bar Council and LSC or as may otherwise be appropriate. A complaints leaflet will be enclosed.
7. Any complaint involving negligence or potential claims against professional indemnity insurance will be brought to the attention of the professional indemnity insurers as soon as possible. Where necessary the matter will be referred to the Bar Council or the Legal Ombudsman. If the matter involves the CPS then the CPS complaints procedure will be followed.
8. The complaints forms set out below are completed and retained upon the relevant personal files and centrally for at least 12 months and reviewed by the Equal Opportunities Officers and Quality Manager. Where appropriate the systems procedures and training needs will be reviewed by the Quality Manager to prevent a similar complaint in the future.
9. Where the complaint is made against the Quality Manager and/or Heads of Chambers then these Members of chamber will not investigate consider or determine the complaint, nor will they contact the complainant. The matter will be dealt with by the management Committee in line with the external Complaints Policy at Appendix 15 of the Chambers Manual with the assistance of an Equal Opportunities Officer.

10. This policy will be disapplied or amended in exceptional circumstances for example upon the advice of the police or the Bar Council or the professional indemnity insurer.

Individual Complaint Record

Complaint No	Action taken, by whom, relevant dates
Date complaint received	
How received	
Date acknowledged in writing	
Complainant name and contact details	
Complaint details	
Individual complained about	
Investigators	
Review of correspondence papers etc	
Interviews/meeting with parties /witnesses	
Letters to complainant	
Other action	
Complaint justified	
Recommended action Including if procedure disappplied e.g. on police bar council or BMIF advice	
3rd parties e.g. BC BMIF notified	
Review of internal procedures	
EOP form completed if relevant	

Central Complaint Register

Date	complainant	complaint	Person complained about	Resolution -justified remedial action 3 rd party e.g. Bar Council BMIF notified	Review procedures outcome
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Introduction

THE PUBLIC ACCESS SCHEME GUIDANCE FOR LAY CLIENT

The purpose of this Guide is to explain how the public access scheme works and to show how lay clients can use it to instruct barristers.

What is public access?

Members of the public may now 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.

Although the barrister's role remains essentially the same, members of the public may instruct a barrister directly through the public access scheme.

What are the advantages of the public access scheme?

The main advantage of the public access scheme is that it could potentially save you money whilst giving you access to the Bar, since you would be paying for a barrister only instead of a barrister and solicitor. However, although the barrister would be able to deal with most aspects of the case, you could have to assist in some limited areas, generally with filing documents with the court. This is explained in more detail below.

Is my case suitable for public access?

Public access is available in all types of work that barristers can do, except for work funded out of legal aid. It is most suitable for reasonably straightforward cases. It is likely to be inappropriate in cases involving children. If you are not sure whether your case would be suitable for public access, you should contact an appropriate barrister (see below) of his or her clerk and seek an initial view. If the barrister considers that your case would benefit from the involvement of a solicitor, he or she will tell you so. A barrister may choose whether or not to take a public access case. The factors which he or she will take into account are discussed below.

How do I make use of the public access scheme?

1

For more information contact: the Professional Practice Team on 020 7611 1444

To use the scheme, you would have to instruct a barrister yourself. Further details of how to do this are given in this guidance.

2

For more information contact: the Professional Practice Team on 020 7611 1444

The public access scheme

The difference between the services offered by a barrister and a solicitor

Barristers specialise in providing expert legal advice, advocacy and the drafting of documents.

The services offered by barristers are different from those offered by solicitors for two main reasons.

1) First the different service offered:

Barristers are trained as specialist advisers and advocates. This means that they become involved where expert legal advice is needed, where documents need to be drafted for their clients to use, or for advocacy (presenting a case in court or before some other tribunal or organisation).

Solicitors also give advice to and draft documents for their clients to use or may instruct a barrister to provide this service. Some solicitors also provide advocacy services to their clients, although many prefer to instruct a barrister to do this.

2) By law, barristers are not able to provide some of the services that solicitors offer. On the other hand, some solicitors do not themselves provide advocacy services. At present only a solicitor may conduct litigation and take the formal steps that are necessary to progress and action. Your barrister will advise you if he or she considers that anything you want done is something that only a solicitor can provide.

Some examples of work which a barrister is allowed to do:

- a) A barrister may appear on your behalf at Court.
- b) A barrister may give you legal advice.
- c) A barrister may draft documents for you, such as a will.

- d) A barrister may advise you on the formal steps which need to be taken in proceedings before a court or other organisation and draft formal documents for use in those proceedings.

- e) A barrister may draft and send letters for you on his Chambers' headed paper.

- f) If a witness statement from you is required in proceedings, a barrister may prepare that statement from what you tell him or her. A barrister may also help to prepare witness statements from another person based on the information which that person has provided.

- g) Where a case requires an expert witness (for example, a surveyor), a barrister may advise you on the choice of a suitable expert and may draft a letter of instruction which you can then send to the expert as a letter from you on your own notepaper.

3

For more information contact: the Professional Practice Team on 020 7611 1444

What a barrister cannot do on your behalf:

The following are examples of work that a barrister is not allowed to do:

- a) A barrister cannot issue proceedings on your behalf or to issue other applications or to take other formal steps in court or other proceedings. You would have to send the documents to the court, although the barrister could help prepare them for you.

- b) A barrister is not allowed to instruct an expert witness on your behalf.

c) A barrister is not allowed to take responsibility for the handling of clients' affairs, or to handle clients' money.

Is my case suitable for public access?

In considering whether your case is suitable for Public access, the barrister is likely to take into account

- a) The nature of the work which you wish him or her to undertake
- b) Your ability to deal with any aspects of the case which would normally be carried out by a solicitor that cannot be covered by a public access barrister.

Much depends on the circumstances of your case. Here are some possibilities:

- a) The barrister might decide that your case is suitable for public access and that there is no need for the involvement of a solicitor. If circumstances change, the barrister may have to advise you that a solicitor will need to be instructed.
- b) Although your case may become unsuitable for public access in the future, it is suitable for public access for the time being. In such a case, the barrister will inform you
 - i) of the work which is suitable for public access
 - ii) the likely point at which your case will become unsuitable for public access and iii) that he or she will have to withdraw at that stage if you do not instruct a solicitor.
- c) Your case is such that (whether because of its complexity, or because of the stage which it has reached) it is not suitable for public access and that a solicitor is required. In this situation, you should be told by the barrister why your case is not suitable and that he or she would be prepared to act for you if instructed by a solicitor. In such circumstances you can ask the barrister to recommend a suitable solicitor to you.

If the barrister decides to accept your instructions, you will be sent a client care letter.

Is a barrister obliged to accept public access work?

4

For more information contact: the Professional Practice Team on 020 7611 1444

A barrister may choose whether or not to accept public access work. This choice is restricted in that it is impermissible to refuse to take on a case for specific reasons, relating to discrimination, which are set out below.

When deciding whether to accept instructions in a case, a barrister must consider whether that case is suitable for public access. If he or she decides that it is not suitable, he or she must decline the instructions. Throughout the case, the barrister remains under a continuing duty to consider whether a case remains suitable for public access, and he or she must refuse to continue to act on a public access basis if it is no longer suitable.

A barrister may not refuse to accept instructions:

- a) On the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability or political persuasion; and
- b) In the case of advocacy work, on the grounds:
 - i) That the nature of the case is objectionable to him or her or to any section of the public; or
 - ii) That your conduct, opinions or beliefs are unacceptable to him or her or to any section of the public.

Does a barrister need special training to take public access work?

Barristers must satisfy a number of conditions before they can accept public access work. Subject to limited exceptions, before a barrister is permitted to accept public access work he or she must have:

- a) practised for a total of three years following the completion of training
- b) attended a "public access" training course approved by the Bar Standards Board and
- c) given certain notices which are required to be given by the Bar Code of Conduct.

Instructing a public access barrister

How do I find a barrister?

It is important to instruct a barrister who specialises in the appropriate area of law for your case. If you do not know whom to instruct, there are a number of ways of finding the right barrister.

The Bar Council has a directory of public access barristers on its website, at:

<http://www.barcouncil.org.uk/about/find-a-barrister/public-access-directory/>

There are also legal directories – for example, the Bar Directory (which may be found via the Bar Council's website), Chambers & Partners Guide to the Legal Profession, or the Legal 500. In addition, many sets of Chambers publish their own web sites which contain information about the set of Chambers as a whole, and the individual barrister members.

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For more information contact: the Professional Practice Team on 020 7611 1444

Alternatively, if you know of a set of barristers' Chambers which undertake your sort of case, you can telephone them and ask the Senior Clerk or Practice Manager to make a recommendation.

How do I instruct a barrister?

Try to clarify in your own mind the nature of your problem and what it is that you want the barrister to do.

Telephone the Senior Clerk or Practice Manager of the set of Chambers in which the barrister practises and tell him or her that you wish to instruct the barrister directly. He or she will tell you what to do next.

Alternatively, if the barrister practises as a sole practitioner, you should contact the barrister's place of work. You will have to explain that you wish to instruct the barrister directly and the nature of the work which you wish the barrister to undertake for you. You may be asked to send written instructions, setting out the

factual background to your case and what it is that you want the barrister to do. Alternatively, the barrister may decide that it would be appropriate in the first instance to discuss the matter with you on the telephone or at a preliminary meeting to decide on the best way forward.

Proof of your identity

In certain circumstances, the barrister will be required by law to carry out certain identification procedures. These must be followed as soon as reasonably practicable after you have first made contact with the barrister - it is likely that this will take place after you make the initial contact described above. Whether these procedures apply and, if so, how they should be followed, need to be considered by the barrister when you first make contact.

Where the procedure applies, the barrister will require satisfactory evidence of your identity – that is, proof of your name, date of birth and current address. The type of evidence required will depend on the circumstances. For example:

- a) If you are acting as an individual, you may be required to produce in person your current passport or other national identity card or a new form of driving licence (with a photograph) together with a recent utility bill, bank or building society statement.
- b) If you are acting on behalf of a company, you will need to produce a certified copy of the Certificate of Incorporation, the latest accounts filed at Companies House and evidence that you are authorised to act on behalf of the company.

To carry out the procedures properly, the barrister may well have to have a meeting with you. You will be told what to bring to that meeting. The barrister is required to take copies of the documents which you bring and to retain those copies for 5 years.

What happens next?

The barrister will have to decide whether your case is suitable for public access. He or she may charge you for this Preliminary work.

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If your case is suitable for public access, you and the barrister will have to agree the terms on which he or she is to carry out the work. Those terms will be set out in a client care letter which will be sent to you.

If your case is not suitable for public access, the barrister will tell you so. If you wish, he or she may recommend a suitable solicitor for you to instruct.

Some cases obviously will be suitable for public access. In such a case, and provided that (a) the barrister is willing to undertake the work, (b) agreement can be reached about the charge which will be made for that work and (c) where appropriate, you have provided satisfactory proof of your identity, your instructions will be accepted and a client care letter will be sent to you. The role and importance of the client care letter is described below.

In other cases, the barrister may suggest that you have a preliminary meeting before deciding whether or not to proceed with the instructions.

It is also open to a barrister to accept instructions to read the papers and advise whether or not he or she is able to perform the work which you wish him or her to undertake. If instructions are accepted for these limited purposes, it is important that you are both clear as to whether a charge is to be made. If preliminary work is to be carried out and a charge made for that work, you will be sent a client care letter.

The client care letter

The client care letter records the terms of the agreement between you and the barrister. It is a very important document and you must read it carefully.

It contains a description of the work to be undertaken, the basis on which you will be charged for that work, and the other terms of the agreement between you and the barrister. If you are unclear about, or disagree with any of the contents of that letter, you must raise your concerns with the barrister immediately.

How will I be charged?

A barrister usually charges according to their level of experience, the complexity of the case and the length of time involved in dealing with it. It is important that the cost to you, and the stage at which the fee is payable is agreed at the outset, and that the terms of the agreement are clear to both you and the barrister.

There are no formal scales of fees for barristers' work. Generally, barristers charge according to their level of experience and the complexity and length of time involved in any particular matter. The amount to be charged for any particular piece of work, and when the fee becomes payable, is a matter for negotiation between you, the barrister and his or her clerk. All public access barristers are independent self-employed practitioners, competing with each other. If you consider the fee proposed by one barrister to be too high, try another barrister.

It is very important that you and the barrister agree from the outset the basis upon which you are to be charged for work and the time at which the fee will become payable.

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Where the fee relates to a hearing, the barrister is normally entitled to the fee, whether or not the hearing goes ahead. If that is to be the case, the barrister will tell you. You may, if you wish, try to agree a different basis for payment of the fee in such a case.

In other cases (whether for a conference or for paperwork), it may be possible to fix a fee in advance for the work. However, that will not be possible in every case. Where it is not possible, you should ask for an estimate. You may be able to agree with the barrister that there should be a "ceiling" on the fee charged for a particular piece of work.

If you agree a fee in advance of the work being done, then the barrister may require that fee to be paid before carrying out the work. Where a fee is not fixed in advance and the work involves the production of paperwork (for example, the drafting of a contract), the barrister may nevertheless require you to pay for the work after he or she has completed it and before releasing it to you. If that is to be the case, the barrister should tell you at the outset.

Although conditional fee agreements (agreements under which a fee becomes payable only in the event of success in a case) are possible, it is unlikely that barristers will be willing or able to undertake public access work on a conditional fee basis, save in very rare cases.

The barrister is required to keep sufficient records to justify the fees that he or she is charging. You are entitled to ask for details to justify the fee that you are being charged.

What if I qualify or may qualify for public funding?

If you could be eligible for public funding, a barrister has to advise you to approach a solicitor.

It is unlikely that a barrister will be able to carry out the means assessment required to establish whether you would qualify for public funding. Further, at present, barristers are not able to apply to the Legal Services Commission for public funding on your behalf. If it appears that you may qualify for public funding, therefore, a barrister has to advise you to approach a solicitor with a franchise from the legal Services Commission to investigate this possibility.

Can a barrister stop acting for me after he or she has accepted my instructions?

In public access cases, the barrister must stop acting for you if he or she considers that the case is no longer suitable for public access. The barrister may be able to assist if, as a consequence of no longer continuing to act for you, you will or may experience difficulties in relation to an imminent hearing.

In public access cases, a barrister is also required to cease to act where he or she has formed the view that it is in your interests or the interests of justice that you instruct a solicitor or other professional person. In such cases:

a) Your barrister is under a continuing duty to consider whether your case remains a suitable case for public access. If he or she forms the view that it is not, you will be advised of this fact. If you then instruct a solicitor or other professional person able to provide instructions to the barrister, he or she may continue to act for you. If you do not, your barrister must cease to act for you.

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b) If you are a party to proceedings in which a hearing is imminent, and you are likely to have difficulty in finding a solicitor in time for the hearing, your barrister should provide you with such assistance as is proper to protect your position. Although your barrister may not continue to work for you on a public access basis, he or she may be able to assist you by, for example:

i) Drafting letters for you to send, asking for an adjournment of the hearing

ii) Writing a letter to the court in support of that application, explaining that he or she has had to withdraw and, if appropriate, the reasons for it

iii) Assisting you to find solicitors.

Can I instruct a barrister directly when I have already instructed solicitors?

You may instruct a barrister directly even though you have already instructed solicitors. If you do so, the barrister will still have to consider whether he or she should accept your instructions. However, the fact that you have retained solicitors is not of itself a reason for refusing to accept your instructions; nor may the barrister contact your solicitors without your permission. However, there may be cases (for example, where your case involves existing litigation) where a barrister will refuse to accept your instructions unless you give him or her permission to contact and liaise with your solicitors and you also give your solicitors the necessary permission to provide information to the barrister.

Confidentiality and compulsory disclosure of information

Your barrister will be under a strict professional duty to keep your affairs confidential. Legal professional privilege protects your communications with your barrister from disclosure. The only exception is that any lawyer may be required by law to disclose information to governmental or other regulatory authorities, and to do so without first obtaining your consent to such disclosure or telling you that he or she has made it.

Complaints

In the first instance, you should try the complaints system maintained by the barrister or his or her Chambers. Should this not help, the Bar Standards Board operates a complaints system. If you are not satisfied with the way in which the Bar Council has considered your complaint, you may take the matter up with the Legal Services Ombudsman.

A barrister is required to deal with all complaints courteously, promptly and in a manner that addresses the issues raised by the complaint. He or she is also required to have a written complaints procedure that should be made available to you if you ask for it. Whatever the nature of your complaint, therefore, you should take the matter up with the barrister in the first instance, or his or her Senior Clerk or Head of Chambers. The nature and speed of any response will depend upon the precise circumstances. For example, if your complaint is that the barrister has been negligent, he or she is required to inform his or her insurers and those insurers may need to be consulted about the response.

If this is not possible, or you are unhappy with the manner in which the barrister has dealt with your complaint, you should contact the BSB, the regulator for barristers. We investigate complaints against barristers and take action against those who break the rules of the code

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of conduct. We do this in the interests of the public and to maintain the good name and standards of the profession. There is no charge for making a complaint to us.

The address and phone number is:

Complaints and Investigations Department, Bar Standards Board
289-293 High Holborn
London WC1V 7HZ

Main Switchboard: 020 7611 1444 Fax: 020 7611 1342

If you are not satisfied with the way in which the Bar Standards Board considered your complaint, you may contact the Legal Services Ombudsman to investigate how we handled it. The Ombudsman is not a lawyer. If the Ombudsman thinks that the complaint was not investigated properly, she can recommend that the complaint be reconsidered or that the BSB and/or the barrister pays compensation.

The Ombudsman's address is:

The Legal Services Ombudsman 3rd Floor
Sunlight House
Quay Street

Manchester M3 3JZ.
Email: lso@olso.gso.gov.uk

Website: www.olso.org/

Lo-call number: 0845 6010794 (charged at local rates and available nationally)

Bar Standards Board March 2010

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