

## CURRENT GUIDANCE

# Public Access Guidance for Lay Clients

## Introduction

1. The purpose of this guidance is to explain how the Public Access scheme works, and to show how members of the public (“lay clients”) can use it to instruct barristers directly.

## What is Public Access?

2. The Public Access scheme allows members of the public to instruct a barrister directly. In the past it was necessary for clients to use a solicitor to instruct a barrister.

## What are the advantages of Public Access?

3. The main advantage of Public Access is that it could potentially save you money, since you would be paying for a barrister only instead of a barrister and a solicitor. However, although the barrister would be able to deal with many aspects of the case, you may have to assist in some areas, including filing documents with the court (unless the barrister is authorised to conduct litigation on your behalf). This is explained in more detail below but can be a relatively complex and technical process. In some cases, the barrister may recommend that you instruct a solicitor because of the complexity of the case, or because you may need more assistance than the barrister alone can provide.

## Is my case suitable for Public Access?

4. Public Access is available for all types of work that barristers can do, except for work that is funded by legal aid. It is worth considering if it would be better to have a solicitor to assist with your case. Some cases may not be suitable for Public Access

because of their emotional nature, because they are particularly complex, or because the type of work that needs to be done to prepare the case would be difficult for you and may not be able to be done by a barrister. If you are not sure whether your case would be suitable for Public Access, you should contact an appropriate barrister (see below) or their chambers and seek an initial view. If the barrister believes that your case would benefit from the involvement of a solicitor, they will tell you so.

5. You may need to be able to deal with certain administrative tasks to help your case along, without the help of another legal professional. For example, you may need to be able to gather together the papers and the evidence in support of your case that the barrister will need to do the work. You may also need to file documents at court (for example, submit documents such as expert reports, case summaries or witness statements, depending on the case) and write to the court and other parties (although the barrister will be able to draft letters and other legal documents on your behalf). If you are not sure if you will be able to assist with the various administrative tasks for whatever reason, it is worth considering if it would be better to have a solicitor assist you with your case.
  
6. Litigation is when a legal case is taken to and through a court and some tribunals. If your case involves litigation, you should ask whether your barrister is authorised to conduct litigation on your behalf (unlike solicitors, not all barristers are able to conduct litigation). If the barrister cannot do this for you, you will be a “litigant in person” and will be treated by the court and the other side as though you were acting without any legal assistance. If your case goes to court you will be the person whose name appears in the court's records, and all documents from the other parties and the court will be sent directly to you. However, you can sometimes ask or arrange for the court or tribunal and the other parties to copy documents to a third party other than your barrister. If your barrister has been authorised to conduct litigation, then they will be able to do these tasks for you.

7. In considering whether your case is suitable for Public Access, the barrister is likely to take into account the nature and complexity of the case and (if the barrister cannot undertake litigation for you) your ability to deal with those aspects of it which would normally be taken care of by a solicitor. In making a decision the barrister will be guided by the requirements set out in the BSB (Bar Standards Board) Handbook. If they decide that your case is not suitable for Public Access, the rules require them not to act for you. If you wish, they may recommend a suitable solicitor for you to instruct.
8. A barrister may accept instructions to read the papers and advise whether or not they are able to do the work which you wish them to do. If your instructions are accepted for these purposes only, it is important that you are both clear about whether the barrister will charge you for this. If the barrister is going to charge you, you will be sent a client care letter. Copies of these letters are available on our website.

#### **What if I qualify or may qualify for public funding?**

9. If you are eligible for public funding (also known as “legal aid”) and wish to take advantage of this funding, a barrister should advise you to approach a solicitor. This is because barristers cannot do legal aid work unless they have been instructed by a solicitor.
10. If you are not sure if you qualify for public funding and you would like to talk to someone in more detail about getting legal aid, you should contact a solicitor who does legal aid work. They will be able to tell you about legal aid for a civil case (e.g. when you are in a private dispute with another individual or organisation) and for a criminal case (e.g. where a crime may have been committed). It is unlikely that a barrister will be able to do the required means test to check whether you would

qualify for public funding. You can find out more information on the gov.uk website:

<https://www.gov.uk/check-legal-aid>

11. Whether or not you qualify for public funding, you might like to consider whether you have any insurance policies that might cover your legal fees, or if the fees may be paid by someone else, for example a trade union.
12. You may not wish to investigate whether you qualify for public funding, or if you qualify for legal aid you may still prefer to instruct a Public Access barrister. If so, the barrister should ensure you fully understand that you will not have legal aid for your case, and the likely costs to you of not accessing public funds. It is likely that the barrister will ask you to confirm in writing that you fully understand the consequences of your decision. For example, the client care letter might contain a paragraph stating that you have made an “informed decision” not to use legal aid.

### **Does a barrister have to accept Public Access work?**

13. A barrister may choose whether or not to accept a case that is suitable for Public Access. However, a barrister may not refuse to accept instructions:
  - a. On the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief or pregnancy and maternity;
  - b. On the grounds that they (or others) do not like the nature of the case; or
  - c. On the grounds that your conduct, opinions or beliefs are unacceptable to them (or others).

14. If the barrister decides to accept your instructions, you will be sent a client care letter that describes the work to be undertaken, sets out the terms and conditions, states how much the work will cost and how to complain if something goes wrong.
15. Throughout the case, the barrister remains under a duty to consider whether a case remains suitable for Public Access. They must refuse to continue to act as a Public Access barrister if it is no longer suitable for them to do so.

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

16. The difference between what a barrister does and what a solicitor does has become less obvious over the last few years. However, barristers specialise in providing expert legal advice, representing clients in court and drafting legal documents. Solicitors normally give advice to and draft documents for their clients, or may instruct a barrister to provide this service.
17. Barristers are not able to provide some of the services that solicitors offer. For example, they are not allowed to hold clients' money in an account and unless they have been authorised to do so, they will not be able to conduct litigation. Your barrister will advise you if anything you want is something which only a solicitor can provide.
18. The following are 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 legal documents for you, such as a will or statement of claim.

- d. A barrister may advise you on the formal steps which need to be taken in proceedings before a court or tribunal, and draft formal documents for use in those proceedings.
  - e. A barrister may draft and send letters for you if they have proper systems in place to manage letters, and are not conducting litigation when not authorised to do so (see below).
  - f. If a witness statement from you is required in proceedings, a barrister may prepare that statement from what you tell them. 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 in a property case who can provide technical/professional evidence), a barrister may advise you on the choice of a suitable expert and instruct them for you.
  - h. Barristers can negotiate on your behalf and can attend employment, police or investigative hearings.
19. **If a barrister is not authorised to conduct litigation, they should not file proceedings on your behalf with the court or file other applications, or take other formal steps in court or other proceedings.** (If the barrister has not been authorised to conduct litigation, you will have to send the documents to the court, although the barrister could help prepare them for you.). For more information on what ‘conducting litigation’ means, refer to the BSB’s Guidance on Conducting Litigation, which is available on the BSB’s website.
20. A barrister **is not allowed to handle clients’ money**. However, solicitors can hold client money in their firm’s trust account.

### **Does a barrister need special training to do Public Access work?**

21. Yes. Before a barrister can accept Public Access work, they must have done a Public Access training course approved by the BSB, and notified the BSB that they have done this. You check whether a barrister is Public Access registered by looking on the Barristers' Register on the BSB's website.

### **Instructing a Public Access barrister**

#### **How do I find a barrister?**

22. It is important to instruct a barrister who specialises in the area of law for your case. If you do not know who to instruct, there are a number of ways of finding the right barrister. The Bar Council has an online directory of Public Access barristers called the Direct Access Portal: <https://www.directaccessportal.co.uk/>
23. There are also legal directories for finding barristers; for example, the Chambers & Partners Guide to the Legal Profession and the Legal 500. Many barristers' chambers also have their own websites which contain information about the different barristers who work there, and the type of work they do. A chambers is a practice where a group of independent self-employed barristers share premises and administrative services.
24. Alternatively, if you know of a barristers' chambers which specialises in your sort of case, you can telephone them and ask the Senior Clerk or Practice Manager to recommend a barrister.

### **How can I find out more information about a barrister's services and prices?**

25. Barristers must make clear on their websites which types of legal services they provide and in which areas of the law they can help you. For example, whether they work in family law cases or in employment cases, or whether they represent people in criminal trials. They must also provide an idea of how long it might take to resolve your type of case.
26. Barristers must disclose certain information about their costs. This includes making it clear that you can contact them to obtain a quotation for the work you want them to do, and how to contact them to get that quote. They must also disclose whether they usually quote by providing a "fixed fee" (for which they will do all the work required to meet the needs of your legal matter), or whether they quote for their services by the hour, and then estimate how many hours work they think your situation will need.
27. Public Access barristers must also publish their actual fees for certain types of service, so you can compare their prices more easily with those charged by others. This applies if the barristers are offering any of the following services via Public Access:
  - Employment Tribunal cases (advice and representation for employers and employees);
  - Financial disputes arising out of divorce;
  - Immigration appeals (First-tier Tribunal);
  - Inheritance Act advice;
  - Licensing applications in relation to business premises;
  - Personal injury claims;
  - Summary only motoring offences (advice and representation for defendants); and
  - Winding-up petitions.

28. All barristers' practices must also display text to show that barristers are "*regulated by the Bar Standards Board*". They must also provide you with weblinks to check that their barristers are authorised by the BSB, and to check their disciplinary record.
29. You should be able to find all this information on a barrister's website. If the barrister does not have a website, they must provide it to you in a hard copy document if you ask them to.

### **How do I instruct a barrister?**

30. 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 chambers where the barrister works and tell them that you wish to instruct the barrister via Public Access. They will tell you what to do next.
31. Alternatively, if the barrister works by themselves as a sole practitioner i.e. is not a member of a chambers, you should contact the barrister's place of work. You should explain that you wish to instruct the barrister via Public Access and the work which you wish the barrister to do for you. The barrister may want you to send some further documents, or alternatively may decide that it would be best to meet you to agree the way forward.

### **Proof of your identity**

32. In some circumstances, the law will require the barrister to do certain identification procedures. These must be followed as soon as possible after you have first made contact with the barrister.

33. If this is needed, the barrister will require evidence of your identity i.e. 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, other national identity card or a driving licence (with a photograph) together with a recent utility bill, or 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.
34. To do the procedures properly, the barrister may need 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 you bring and to keep those copies for 7 years.

### **How will I be charged?**

35. 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 when the fee is payable, is agreed before the barrister starts work. It is also important that the terms of the agreement are clear to both you and the barrister before the barrister starts work.
36. There are no formal scales of fees for barristers' work. The amount to be charged for any particular piece of work, and when the fee is payable, is a matter for negotiation between you and the barrister. All Public Access barristers are independent self-employed practitioners, competing with each other. If you consider the fee quoted by one barrister to be too high, try another barrister.

37. If the fee is for a hearing, the barrister is normally entitled to the fee whether or not the hearing goes ahead. If that is the case, the barrister should tell you before you agree the fee. You may, if you wish, try to agree a different arrangement for payment of the fee.
38. In other cases (e.g. for a meeting or written advice), it may be possible to fix a fee in advance for the work. However, that will not be possible in every case. If 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.
39. The barrister may require their fee to be paid before doing the work. If the work involves the production of paperwork (for example, the drafting of a contract), the barrister may require you to pay for the work after they have completed it but before releasing it to you. The barrister should tell you before you agree the fee.
40. Conditional fee agreements (where you only pay a fee if your case succeeds) are possible. However, in most cases it is unlikely that barristers will be willing to do Public Access work under conditional fee agreements. Again, this is matter of negotiation between you and the barrister.
41. The barrister is required to keep records to justify the fees that they are charging. You are entitled to ask for details to justify the fee that you are being charged.

**Can a barrister stop acting for me after they have accepted my instructions?**

42. Yes, but this will only happen in a small number of cases. There will be some rare occasions when the barrister has to stop acting for you. In Public Access cases, the barrister must stop acting for you if they believe that the case is no longer suitable for Public Access. The barrister may be able to assist if, because of them no longer acting for you, you may experience difficulties with your case.

43. In Public Access cases, a barrister must also stop acting for you where they believe that it is in your interests for you to instruct a solicitor or other professional person. In these cases:
- a. Your barrister is under a duty to consider whether your case remains a suitable case for Public Access. If they believe 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, they may continue to act for you. If you do not, your barrister must stop acting for you.
  - b. If you are a party to proceedings (i.e. you have brought a case against another person or a case has been brought against you), a hearing is coming up shortly and you are likely to have difficulty finding a solicitor in time for the hearing, your barrister should provide you with assistance to protect your position. Although your barrister may not continue to work for you on a Public Access basis, they 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 they have had to withdraw and, if appropriate, explaining the reasons for doing so; and
    - iii. assisting you to find a solicitor.

**Can I instruct a barrister via Public Access when I have already instructed solicitors?**

44. Yes, you may instruct a barrister via Public Access even though you have already instructed solicitors. If you do so, the barrister will still have to consider whether they should accept your instructions. The fact that you have instructed solicitors is not a reason for refusing to accept your instructions, and the barrister may not contact

your solicitors without your permission. However, there may be cases (e.g. where your case involves existing litigation) where a barrister will refuse to accept your instructions unless you give them permission to contact and work with your solicitors, and you also give your solicitors permission to provide information to the barrister.

### **Confidentiality and compulsory disclosure of information**

45. Your barrister is under a duty to keep your affairs confidential. This is called “legal professional privilege” and protects your communications with your barrister from being disclosed to others unless you consent. The only exception is that any lawyer (e.g. a barrister or a solicitor) may be required by law to disclose information to certain authorities, and to do so without first getting your consent or telling you that they have disclosed the information.

### **Complaints**

46. If you have a complaint about your barrister, then you should try to resolve it by following the complaints procedure of your barrister or their chambers. Information on how to do this should have been provided to you in your client care letter.
47. If you are not satisfied with the outcome of your complaint, then you can contact the Legal Ombudsman. The Legal Ombudsman is an independent organisation. It deals with complaints about the service provided by all types of lawyers in England and Wales. The Legal Ombudsman can decide whether or not the service you received from your barrister was satisfactory, and can:
- Award compensation for poor service;
  - Consider whether the fees charged/paid should be reduced; and
  - Decide whether you should receive an apology.

48. Any complaint to the Legal Ombudsman should be made within 6 months of receiving the final response to your complaint from your barrister or their chambers (as long as the response tells you about your right to complain to the Ombudsman and the six month time limit). A complaint to the Legal Ombudsman must also not be made more than 6 years after the problem arising, and not more than 3 years after you become aware of the problem.
49. The Legal Ombudsman will review your complaint and decide whether there are any concerns about professional misconduct (professional misconduct is when a barrister has not kept to the BSB Handbook, and so disciplinary action might need to be taken). If your complaint raises concerns about professional misconduct, the Legal Ombudsman will refer those concerns to the BSB for consideration. If the Legal Ombudsman needs to make a referral, you do not need to do anything. The Legal Ombudsman will let you know if they have made a referral and the BSB will also contact you to confirm this.
50. The Legal Ombudsman can give you more detailed information on how to make a complaint. You can contact the Legal Ombudsman:
- By phone:** 0300 555 0333
- By email:** [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)
- Through their website:** [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)
- By post:** PO Box 6806, Wolverhampton, WV1 9WJ

**Bar Standards Board**  
**October 2019**