

## **Guide to instructing a public access barrister in a civil case**

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- Introduction
- Code of Conduct
- Suitability
- Client care
- Money Laundering Regulations compliance
- Proceeds of Crime Act 2007
- Terrorism Act 2000
- Bribery Act 2010
- Consumer Protection
- Fees and charging structure
- Confidentiality and compulsory disclosure of information
- Withdrawing from a case
- Dealing with litigants in person
- Complaints
- The Code of Conduct: rules and guidance

### **Introduction**

The public access scheme allows a member of the public ('client'), including an executor, to instruct a registered public access barrister ('barrister') directly, i.e. without the involvement of a Solicitor. A barrister can also accept instructions where a solicitor is already acting. By instructing a barrister directly, a client saves the cost of paying for a solicitor. However a barrister is not authorised to

carry out '*litigation*' on a par with a solicitor without first securing an extension on their practicing certificate. I am dual qualified as a solicitor and on 19 February 2016 my Practice Certificate was extended by the Bar Standards Board to authorise me to conduct litigation. In an appropriate case, this permits me to carry out day to day case management activities (including the issue of a Claim Form in any court in England and Wales) which are reserved to Solicitors, and in effect, to offer a one stop shop litigation and advocacy service to members of the public, from evaluation of the merits, evidence, and remedies, through to trial or settlement of the claim. The conduct of litigation includes:

- (i) providing an address for service;
- (ii) issuing proceedings, applications, and appeals before any court in England and Wales;
- (iii) acknowledgment of service;
- (iv) filing and serving documents (including trial bundles);
- (v) disclosure; and
- (vi) instructing an expert.

A public access barrister cannot handle client money must not pay a disbursement on your behalf.

Please note that litigation excludes:

- (i) the provision of legal advice;
- (ii) the drafting of documents (including the taking of a proof of evidence; drafting statements of case; and reserved instrument activities, e.g. drafting a trust deed);

- (iii) the drafting of letters for you to send on your own letterhead;
- (iv) the conduct of correspondence for you , i.e. with the other party or their legal representative on my Chambers' letterhead (however if a barrister does not have adequate systems, experience and resources in place to deal with correspondence, then any letters sent on headed Chambers' paper should contain the following health warning, *'I will be representing [my client] on a public access basis; please note that pursuant to paragraph 401A of the Code of Conduct of the Bar of England & Wales, all correspondence should be sent directly to [my client at]'*).
- (v) negotiating on your behalf;
- (vi) representing you in a mediation; and
- (vii) appearing as an advocate, exercising rights of audience before every court in England and Wales in relation to all proceedings.

**To enquire about the suitability of the public access scheme and to instruct me, please telephone the Senior Clerk at 1 Essex Court, Mr Ian Hogg, on 020 7936 3030.**

### **Code of Conduct**

The normal rules under the Code of Conduct apply just as much to Public Access work as to other types of work by a barrister. The duty of the barrister is to act in the best interests of his client is subject to an overriding duty to the court to act with independence in the interests of justice. In particular the barrister must:

- (i) not knowingly or recklessly mislead or attempt to mislead the court;
- (ii) take reasonable steps to avoid wasting the court's time;
- (iii) ensure that his ability to act independently is not compromised;

- (iv) not draft any statement of case, witness statement, affidavit or other document containing:
  - any statement of fact or contention which is not supported by his client or by his instructions;
  - any contention which he does not consider to be properly arguable;
  - any allegation of fraud, unless he has clear instructions to allege fraud and has reasonably credible material which establishes an arguable case of fraud;
- (v) take reasonable steps to ensure that the court has before it all relevant decisions and legislative provisions;
- (vi) not make submissions, representations or any other statement, or ask questions which suggest facts to witnesses, that he knows, or has been instructed, are untrue or misleading;
- (vii) not call witnesses to give evidence or put affidavits or witness statements to the court which he knows, or has been instructed are untrue or misleading, unless he makes clear to the court the true position as known by him or instructed;
- (viii) not encourage a witness to give evidence which is misleading or untruthful;
- (ix) not rehearse, practise with or coach a witness in respect of their evidence;
- (x) not communicate with any witness (including his own client) about the case while the witness is giving evidence, unless he has the permission of the representative for the opposing side or of the court;
- (xi) not abuse his role as an advocate by: making statements or asking questions merely to insult, humiliate or annoy a witness or any other

person; and making a serious allegation against a witness whom he has had an opportunity to cross-examine unless he has given that witness a chance to answer the allegation in cross-examination;

(xii) cease to act if:

- he becomes aware that his client has a document which should be disclosed but has not been disclosed (unless his client agrees to the disclosure of the document);
- professional embarrassment is caused by inadvertently reading a document; or
- he is satisfied that it is in the interests of the client or in the interests of justice for his client to instruct a solicitor or other professional client (see 'Withdrawing from a case' below).

However the barrister's duty to the court does not prevent him from putting forward his client's case simply because he does not believe that the facts are as his client states them to be (or as he on his client's behalf states them to be), as long as any positive case he puts forward accords with his instructions and he does not mislead the court. The barrister's role when acting as an advocate or conducting litigation is to present his client's case, and it is not for him to decide whether his client's case is to be believed.

The Bar Standards Board Guidance on '**Investigating or collecting evidence and taking witness statements**' states,

- 1. There is no longer a rule which prohibits a self-employed barrister from investigating or collecting evidence generally or therefore from taking statements from potential witnesses (which is treated for these purposes as investigating or collecting evidence). By taking witness statements is meant interviewing the potential witness with a view to preparing a statement or taking a proof of evidence. A barrister has always been*

*entitled to settle a witness statement taken by another person, and this is not investigating or collecting evidence. However, rule 401(b)(iii) provides that a self-employed barrister must not in the course of his practice conduct a case in court if the barrister has previously investigated or collected evidence for that case unless the barrister reasonably believes that the investigation and collection of that evidence is unlikely to be challenged.*

2. *It follows that if the nature of the evidence or the circumstances in which it was investigated or collected are such that there is likely to be an issue about that in court, where the barrister might be needed to give evidence, the barrister can properly be involved in the preparations for a case but cannot accept a brief to conduct the case in court, even as the junior member of a team of barristers. Only if the barrister reasonably believes that the investigation and collection of that evidence (as distinct from the evidence itself) is unlikely to be challenged can the barrister properly conduct the case in court. Nothing in the rule is intended to apply to the case where a barrister properly accepts a brief and then, as part of his conduct of the case at court, has urgently to take a statement from his client or a potential witness (see rule 707 of the Code). The rule applies where a barrister has investigated or collected evidence before arriving at court at the start of the case.*
3. *In this regard, barristers should note that rule 401(b)(iii) is in one respect more restrictive in its effect than the previous Written Standards (which are being revised to reflect the new rules) relating to witnesses, which enabled barristers to take witness statements and then act as the junior barrister in the case. The Written Standards stated that it was not appropriate for a witness statement taker "to act as counsel unless he is a junior member of the team of Counsel and will not be examining the*

witness". The Bar Standards Board considers that it is a key function of a junior member of a team of Counsel that s/he should be in a position to conduct the case in court if and when required, and that it is unacceptable to have briefed as junior counsel in a case someone who may not be in a position to take on the full advocacy role in that case by reason of professional embarrassment should it become necessary. The risks to the client's interests and to the due administration of justice generally are too great to allow a barrister to conduct a case in court, even as a junior in a team of barristers, if there is a real risk that the circumstances of the taking of the evidence that barrister has collected will be challenged in the case. If a junior member of the team is called upon to conduct the case and the circumstances of his investigation and collection of evidence is an issue in the case, the barrister might have to stand down, damaging the client's interests (the client having then been deprived of each member of his/her chosen team) and the due administration of justice (through the inconvenience and delay in the conduct of the case).

4. When investigating or collecting evidence, barristers should bear carefully in mind the dangers of unconsciously affecting or contaminating the evidence that a witness is able to give. These are discussed in detail in the Written Standards at paragraphs 6.2.1 - 6.2.7. Barristers should also be aware of the risks of professional embarrassment as a result of becoming involved in investigating or collecting evidence, and take these risks into account when deciding:-
  - a. whether to undertake such work in the first place; and
  - b. if they have done, whether or not they can properly accept a brief at a subsequent trial.

5. *The rules place the onus squarely on the barrister who has investigated or collected evidence prior to accepting a brief to consider and reach a reasonable conclusion whether or not his/her involvement is likely to be challenged.*
6. *In assessing whether to accept a brief in these circumstances, the barrister should be mindful of the dangers of professional embarrassment where s/he has been involved in the collection or investigation of evidence. The barrister's duty is to reach a reasonable decision on the risk of embarrassment before accepting a brief. The brief can only properly be accepted if it is reasonable for the barrister to conclude that the circumstances of his investigation or collection of evidence are unlikely to be challenged. If the barrister's decision is not a reasonable one, and the trial is subsequently adjourned as a result of his professional embarrassment, the barrister risks being exposed to an order for wasted costs as well as prosecution for a breach of the Code.*
7. *Even where a brief is properly accepted, the question of whether the barrister is professionally embarrassed is a matter that s/he must keep under review during the case in light of any later developments.*
8. *Investigation or collection of evidence (save for taking proofs of evidence or preparing witness statements urgently as part of the barrister's conduct of the case at court) is not subject to the cab-rank rule: see rule 604(i). If barristers wish to concentrate on advice and advocacy services and do not wish to undertake other types of activity (especially ones which may reduce their opportunity to undertake an advocacy role), that should be their choice and it is in the public interest that they cannot be forced to accept such work.'*



A barrister must not accept any instructions if to do so he would be professionally embarrassed because:

- (i) he lacks sufficient experience or competence to handle the matter;
- (ii) he will not have adequate time and opportunity to carry out the necessary preparation;
- (iii) his instructions require him to act otherwise than in conformity with the law or the provisions of the Code of Conduct; or
- (iv) he is satisfied that it is in the interests of his client or in the interests of justice, for his client to instruct a solicitor or other professional client.

A barrister may not accept direct instructions from or on behalf of a lay client in or in connection with any matter or proceedings in which, in all the circumstances, it would be in the interests of the client or in the interests of justice for the client to instruct a solicitor or professional client.

### **Suitability**

The cab rank rule does not apply to the acceptance of public access work, and a barrister may choose whether or not to accept a case that is suitable for public access work. If the barrister decides to accept your instructions, you will be sent a client care letter that, amongst other things, describes the work to be undertaken, sets out the terms and conditions, how much the work will cost and how to complain if something goes wrong. **It is also open to a barrister to accept instructions to read the papers and advise whether or not they are able to perform the work which you wish them to do. If your 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.**

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.**

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 Bar Standards Board ('BSB') Handbook. If he decides that your case is not suitable for public access, the rules require him to decline your instructions. If you wish, he may recommend a suitable solicitor for you to instruct.

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. **You may need to be able to deal with certain administrative tasks in order 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 in order to do the work that you ask them to do. 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.**

### **Client care**

In any case where a barrister is not prohibited from accepting instructions, the barrister must at all times consider the developing circumstances of the case, and whether at any stage it is in the best interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client. If,

after accepting direct instructions a barrister forms the view that circumstances are such that it would be in the best interests of the client, or in the interests of justice for the lay client to instruct a solicitor or other professional client the barrister must:

- (a) inform the client of his view; and
- (b) withdraw from the case in accordance with the provisions of paragraph 608(a) of the Code unless the client instructs a solicitor or other professional client to act in the case.

A barrister who accepts public access instructions must forthwith notify his lay client in writing, and in clear and readily understandable terms, of:

1. the work which the barrister has agreed to perform;
2. the fact that in performing his work the barrister will be subject to the requirements of the Code of Conduct and, in particular, paragraphs 401(b), 603 (a) and 608;
3. the fact that the barrister cannot be expected to perform the functions of a solicitor or other authorised litigator and in particular to fulfil limitation obligations, disclosure obligations and other obligations arising out of or related to the conduct of litigation;
4. the fact that the barrister is a sole practitioner, is not a member of a firm and does not take on any arranging role;
5. in any case where the barrister has been instructed by an intermediary on behalf of the client:
  - (i) the fact that the barrister is independent of and has no liability for the intermediary; and

- (ii) the fact that the intermediary is the agent of the lay client and not the agent of the barrister;
- 6. the fact that the barrister may be prevented from completing the work by reason of his professional duties or conflicting professional obligations, and what the client can expect of the barrister in such a situation;
- 7. the fees which the barrister proposes to charge for that work, or the basis on which his fee will be calculated;
- 8. the barrister's contact arrangements; and
- 9. the barristers' complaints procedure and that of the General Council of the Bar.

Save in exceptional circumstances, a barrister will have complied with rule 6 above if he has written promptly to the lay client in the terms of the model letter provided on the Bar Council's website. In any case where a barrister has been instructed by an intermediary, he must give the notice required by rule 6 above both:

- (i) directly to the lay client; and
- (ii) to the intermediary.

A barrister who accepts public access instructions must keep a case record which sets out:

- (i) the date of receipt of the instructions, the name of the lay client, the name of the case, and any requirements of the client as to time limits;
- (ii) the date on which the instructions were accepted;

- (iii) the dates of subsequent instructions, of the despatch of advices and other written work, of conferences and of telephone conversations; and
- (iv) when agreed, the fee.

A barrister who accepts public access instructions must either himself retain or take reasonable steps to ensure that the lay client will retain for at least seven years after the date of the last item of work done:

- (i) copies of all instructions (including supplemental instructions);
- (ii) copies of all advices given and documents drafted or approved;
- (iii) the originals, copies or a list of all documents enclosed with any instructions; and
- (iv) notes of all conferences and of all advice given on the telephone.

### **Money Laundering Regulations compliance**

In some circumstances, the barrister will be required by law to carry out Money-Laundering Rules compliance procedures. These must be followed as soon as reasonably practicable after you have first made contact with the barrister and it is likely that this will happen after you make initial contact. 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:

1. 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, or bank or building society statement.

2. 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 need to meet with you. You will be told what to bring to that meeting. The barrister is required to make copies of the documents you bring and to retain those copies for 5 years.

### **Proceeds of Crime Act 2007 ('POCA')**

A barrister will not commit an offences under ss327-329, if he makes an authorised disclosure under section 338 and (if the disclosure is made before the act mentioned in subsection (1) is carried out), he has the appropriate consent or he intended to make such a disclosure but had a reasonable excuse for not doing so (s327(2), s328(2), s329(2)).

Under S330 of POCA, a barrister also has a duty to make the required disclosure if:

- (i) he knows, suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering; and
- (ii) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion came to him in the course of a business in the regulated sector.

Under s330, a barrister should make disclosure as soon as is practicable after the information or other matter comes to him. A barrister will not commit an offence under s330 if he has reasonable excuse for not disclosing the

information or other matter or he is a professional legal adviser and the information or other matter came to him in privileged circumstances (s330(6)).

The disclosure regime for money laundering and terrorist financing is run by the financial intelligence unit within the National Crime Agency (the NCA). The NCA was launched on 7 October 2013 under provisions granted by the Crime and Courts Act 2013.

If a barrister considers that he should make a disclosure in order to continue to act, then he should complete a suspicious activity report (SAR) and send it to the NCA using the prescribed form.

The NCA is required to treat a SAR confidentially. If a barrister has specific concerns regarding their safety this should be raised in the report or by contacting the police. If there is reason to suspect the confidentiality of the SAR has been breached, barristers should call the breach line on 0800 234 6657.

There are 2 tipping off offences which only apply to the regulated sector:

- (i) S333A(1) – It is an offence to disclose to a third person that a suspicious activity report (SAR) has been made by any person to the police, HM Revenue and Customs, the NCA or a nominated officer, if that disclosure might prejudice any investigation that might be carried out as a result of the SAR. This offence can only be committed:
  - after a disclosure to the NCA or a nominated officer;
  - if the barrister knows or suspects that by disclosing this information, he is likely to prejudice any investigation related to that SAR; and

- the information upon which the disclosure is based came to him in the course of business in the regulated sector.
- (ii) S333A(3) – It is an offence to disclose that an investigation into a money laundering offence is being contemplated or carried out if that disclosure is likely to prejudice that investigation. The offence can only be committed if the information on which the disclosure is based came to the person in the course of business in the regulated sector. The key point is that a barrister can commit this offence, even where they are unaware that a SAR was submitted.

If a barrister asks the NCA for consent to undertake acts which would be prohibited as a principal money laundering offence, it is vital that he clearly outlines all the steps in the transaction that could be a prohibited act. Consent is only given to the extent to which it is asked.

### **Terrorism Act 2000**

The Terrorism Act 2000 ('TACT') applies to all persons who commit offences if they:

- (i) invite, receive, provide or know or have reasonable cause to suspect money or property will be used for the purposes of terrorism (s15);
- (ii) use or possess or have reasonable cause to suspect money or property may be used for the purposes of terrorism (s16);
- (iii) enter into or become concerned or know or suspect an arrangement as a result of which money or other property is made available will be used for the purposes of terrorism (s17) as a result of which money or other property is made; and



- (iv) enter into or become concerned in an arrangement which facilitates the retention, or control by or on behalf of another person, of terrorist property by concealment, removal or transfer or in any other way (s18).

Under ss21ZA and 21ZC of TACT (as amended by The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007), a person does not commit an offence under ss15-18 by involvement in a transaction or an arrangement relating to money or other property if:

- (i) before becoming involved, he makes the required disclosure and has the necessary consent to becoming involved in the transaction or arrangement; or
- (ii) there is a reasonable excuse for the person's failure to do so.

### **Bribery Act 2010**

The payment by a barrister of a referral fee for the purpose of procuring professional instructions is forbidden under the Code of Conduct (BSB Handbook – Part 2, Section C2, rC8 and gc14-28) which indicate that a barrister must not do anything (for example accept a present) in such circumstances as may lead to any inference that his independence may be compromised, and must not give a commission or present or lend any money for any professional purpose to or accept any money by way of loan or otherwise from any client or any person entitled to instruct him as an intermediary.

See 'Guidance on the Prohibition of Referral Fees':

[http://www.barcouncil.org.uk/media/71970/referral\\_fees\\_guidance.pdf](http://www.barcouncil.org.uk/media/71970/referral_fees_guidance.pdf)

which states, '*Barristers are also reminded that the payment of a referral fee whether or not it is disclosed to the lay client is potentially both a civil wrong and a criminal offence*'.

## **Consumer Protection**

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) came into force in May 2008 to prevent business practices that are unfair to consumers. These regulations impose a statutory duty to trade fairly and honestly with consumers and apply before, during and after a contract is made. They also sit alongside other protections for consumers, in particular contract law, including unfair contract terms.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 came into force on 13<sup>th</sup> June 2014 and apply to all public access cases in which a client is dealing as a consumer. Clients must be given certain information, including their right to cancel. They have an unqualified right to cancel within 14 days (and receive full reimbursement of fees unless they have specifically requested the barrister to do the work during the cancellation period).

Law Society Guidance Note: <http://www.lawsociety.org.uk/support-services/advice/practice-notes/consumer-contracts-regulations-2013/>

## **Fees and charging structure**

**Please note that I do not undertake any work on a conditional fee basis or under a damage based agreement, and that my fees are payable in advance of undertaking any work. Legal Aid work cannot be undertaken under the public access scheme. Therefore you will be personally responsible for the payment of my fees.**

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 of us.

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 becomes payable, is a matter for negotiation between you, the barrister and their clerk. All public access barristers are independent self-employed practitioners, competing with each other.

**Where the fee relates to a hearing, the barrister is normally entitled to the fee, regardless of whether or not the hearing goes ahead. If that is to be the case, the barrister should tell you at the outset.** 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 meeting or for a written advice), 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 they have completed it and before releasing it to you. If that is to be the case, the barrister should tell you at the outset.**

The barrister is required to keep sufficient 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.

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

A barrister is under a strict professional duty to keep his client's affairs confidential. This legal professional privilege protects your communications with me from disclosure. The only exception is that any lawyer, e.g. a barrister or a solicitor, 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 they have made it.

### **Withdrawing from a case**

There will be some rare occasions when a barrister has to stop acting for a client. Once instructed under the Public Access scheme, a barrister is under a continuing duty to consider whether it would be suitable to instruct a solicitor, and must stop acting for his client if he considers that the case is no longer suitable for public access. A barrister may be able to assist if, as a consequence of him 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 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:

1. The barrister is under a continuing duty to consider whether your case remains a suitable case for public access. If he 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 may continue to act for you. If you do not, the barrister must cease to act for you.
2. 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) in which a hearing is imminent, and you are likely to have difficulty in finding a solicitor in time for the hearing, the barrister should provide you with such assistance

as is proper to protect your position. Although the barrister may not continue to work for you on a public access basis, he 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 has had to withdraw and, if appropriate, explaining the reasons for doing so; and
- (iii) assisting you to find a solicitor.

### **Dealing with litigants in person**

A litigant in person ('LiP') is an individual, company or organisation that is not represented in court by a solicitor or barrister, but nevertheless has rights of audience.

In accordance with their general ethical responsibilities (BSB Handbook – Part 1, CD7 and Part 2, Section C3, rC18 and 21) when dealing with LiP's barristers should:

- (i) be courteous at all times (paragraph 701 of the Code);
- (ii) not make assumptions about the merits of their case on the basis that they have not obtained representation;
- (iii) not use their professional status or qualification to take unfair advantage of another individual in order to advance their client's interests;
- (iv) avoid technical language or legal jargon; and
- (v) write to the LiP informing them that he has been instructed on a Public Access basis, and that they are advised to seek legal representation.

Barristers have a duty to the court and some Judges may expect Counsel to assist the LiP during the court process. Consideration should be given to: Part 1, CD1 and Part 2, Section C2 and C3, rC3; rC6; rC7; rC20 of the Code of Conduct, and whether any such assistance may cause a conflict of interest between the barrister and his client. There will be situations in which the interests of the client and the court will be furthered by assisting a LiP.

Barristers may assist by:

- (i) sending a copy of any relevant Protocol;
- (ii) drawing their attention to a particular procedural rule or providing a copy of any authority;
- (iii) preparing all necessary bundles of documents and providing them to the court (unless the LiP agrees to undertake the work);
- (iv) providing documents in advance of any deadlines;
- (v) sending reminders of dates for compliance;
- (vi) involving mediators or arbitrators to assist with the settlement process;
- (vii) informing the LiP that certain documents are strictly confidential and may only be disclosed to a restricted class of persons; and
- (viii) explaining that cross-examination should be conducted in a courteous manner and the Judge will be asked to intervene if this courtesy is not in keeping with the code.

### **Complaints**

If you have a complaint about your barrister, then in the first instance, you should try the complaints system maintained by your barrister or his or her Chambers. If you are not satisfied with the handling or outcome of your complaint by your barrister or his or her Chambers, 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:

1. award compensation for poor service;
2. consider whether the fees paid, or have been charged, should be reduced;  
and
3. decide whether you should receive an apology.

Any complaint to the Legal Ombudsman should be made within 6 months of receiving the final response to your complaint from your barrister or his/her Chambers (provided the response specifically notifies you of your right to complain to the Ombudsman and of the six month time limit). A complaint to the Legal Ombudsman must also not be made more than 6 years after the problems arising and not more than 3 years after you become aware of the problem. The Legal Ombudsman will assess your complaint and determine whether there are any concerns about professional misconduct (professional misconduct is when a barrister has not kept to the Code of Conduct for barristers, and, as a result, disciplinary action might need to be taken). If your complaint relates to potential professional misconduct, the Legal Ombudsman will refer the relevant parts of your complaint to the Bar Standards Board for consideration. If your complaint needs to be referred you do not need to do anything. The Legal Ombudsman will let you know if any aspect of your complaint has been referred and the Bar Standards Board will also contact you to confirm this. 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.

Through their website: www.legalombudsman.org.uk.

By post: PO Box 6806, Wolverhampton, WV1 9WJ.

For more information about the Public Access Scheme please visit:

**The Bar Standards Board Scheme Guidance for Lay Clients:**

[https://www.barstandardsboard.org.uk/media/1580314/public\\_access\\_guidance\\_for\\_lay\\_clients\\_-\\_jan\\_2014.pdf](https://www.barstandardsboard.org.uk/media/1580314/public_access_guidance_for_lay_clients_-_jan_2014.pdf)

**The Bar Standards Board Public Access Scheme Guidance for Barristers:**

[https://www.barstandardsboard.org.uk/media/1670904/the\\_public\\_access\\_scheme\\_guidance\\_for\\_barristers\\_june\\_2015\\_.pdf](https://www.barstandardsboard.org.uk/media/1670904/the_public_access_scheme_guidance_for_barristers_june_2015_.pdf)

**The Bar Standards Board Guidance for Clerks Regarding Public Access and Licensed Access Rules:**

[https://www.barstandardsboard.org.uk/media/1666533/4\\_guidance\\_for\\_clerks\\_regarding\\_public\\_access\\_and\\_licensed\\_access\\_rules.pdf](https://www.barstandardsboard.org.uk/media/1666533/4_guidance_for_clerks_regarding_public_access_and_licensed_access_rules.pdf)

**Public Access Model Client Care Letter to Intermediary:**

[https://www.barstandardsboard.org.uk/media/1675557/5\\_public\\_access\\_model\\_client\\_care\\_letter\\_to\\_intermediary.pdf](https://www.barstandardsboard.org.uk/media/1675557/5_public_access_model_client_care_letter_to_intermediary.pdf)

**Public Access Model Client Care Letter to the Client in an Intermediary Case:**

[https://www.barstandardsboard.org.uk/media/1666541/6\\_public\\_access\\_model\\_client\\_care\\_letter\\_to\\_the\\_client\\_in\\_an\\_intermediary\\_case.pdf](https://www.barstandardsboard.org.uk/media/1666541/6_public_access_model_client_care_letter_to_the_client_in_an_intermediary_case.pdf)

**Public Access Model Client Care Letter (no intermediary):**

[https://www.barstandardsboard.org.uk/media/1675565/7\\_public\\_access\\_model\\_client\\_care\\_letter\\_no\\_intermediary\\_.pdf](https://www.barstandardsboard.org.uk/media/1675565/7_public_access_model_client_care_letter_no_intermediary_.pdf)



**The Bar Standards Board Handbook:**

[https://www.barstandardsboard.org.uk/media/1553795/bsb\\_handbook\\_jan\\_2014.pdf](https://www.barstandardsboard.org.uk/media/1553795/bsb_handbook_jan_2014.pdf)

**Annexe F2 - Public Access Rules:**

<https://www.barstandardsboard.org.uk/regulatory-requirements/the-old-code-of-conduct/annexes-to-the-code/annexe-f2-public-access-rules/>