

This guidance is in the process of being reviewed by the Bar Council in light of recent case law on the enforceability of advance payments terms in public access cases where the case is adjourned. Anybody reading this guidance should do so alongside the judgment of the High Court in Glaser & Anor v Atay [2023] EWHC 2539 (KB).



The Bar Council

## Client Care Letters in Public Access Cases

<b>Purpose:</b>	To draw attention to good practice in relation to client care letters in public access cases
<b>Scope of application:</b>	All barristers qualified to accept public access instructions
<b>Outline:</b>	Requirements of the Code of Conduct, the Consumer Contract Regulations and the Provision of Service Regulations in relation to client care letters – drafting points relating to: legal aid and alternative funding; insurance and limitation of liability; confidentiality, GDPR and retention of papers; money laundering – draft template letter for a business client
<b>Issued by:</b>	The Direct Access Panel
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<b>Last reviewed:</b>	April 2023
<b>Status:</b>	<b>Please see the notice at the end of this document. This is not 'guidance' for the purposes of BSB Handbook I6.4.</b>

### Introduction

1. Since the introduction of public access in 2004, model client care letters have been produced for barristers to use when instructed on this basis. These were initially on the Bar Council's website and, subsequent to its creation in 2006, moved on to the BSB's website. The current model letters can be found on the 'Code Guidance' page of

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the BSB's website<sup>1</sup>. There are three model letters: one for cases where the public access client instructs a barrister directly, the others for instructions via an intermediary. This paper is principally concerned with the normal situation<sup>2</sup> where no intermediary is involved and therefore references to the model letter are to the 'no intermediary' version on the BSB's website.

2. Much of the wording in the model letter has changed little since 2004. However, a significant change was made to its format in 2010 with a move to a short covering letter setting out what work the barrister is going to do and the fee charged with a longer attachment setting out terms and conditions. Further changes were made in 2014 to introduce additional information required by the Consumer Contract Regulations 2013. A report in October 2016 jointly commissioned by the BSB and other legal regulators recommended that client care letters should be clearer, less generic and written in plain language. No changes have been made to the model letter following this report. Nor have any changes yet been made in the light of the introduction of the GDPR in May 2018.

3. In response to the joint LSB/BSB public access survey in 2016, 80% of public access barristers said they had or do use the BSB model letter. However, nearly half of those (45%) had made adaptations to it. Different requirements of different clients mean that public access barristers may well have to consider adapting the BSB model letter and the purpose of this paper is to give guidance on how to do so.

4. One complaint made by some barristers doing commercial work is that the model letter is geared more towards clients who are individuals than business clients. For example, the model letter is drafted on the basis that the client is a consumer as defined by the Consumer Contract Regulations 2013 and that the client might qualify for legal aid. According to the 2016 BSB/LSB survey, almost exactly half of public access clients were not individuals. In those cases it can be appropriate to leave out those paragraphs in the model letter which relate to public funding and the 2013 Regulations. There are a number of paragraphs about complaints to the Legal Ombudsman but most businesses will not be able to avail themselves of this scheme. Annexed to this paper is a draft letter which may be used or adapted for use when engaged by a business client (see paragraph 60 below).

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<sup>1</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/>

<sup>2</sup> According to the BSB/LSB Public Access Survey 2016 nearly 90% of public access instructions do not come via an intermediary.

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## **Code of Conduct requirements**

5. Rule C22 in the BSB Handbook requires you to ‘confirm in writing acceptance of the instructions and the terms and/or basis on which you will be acting, including the basis of charging’. This applies whether you are instructed by a professional client (e.g. an instructing solicitor) or directly by a lay client.

6. Rule C125 specifically applies to public access cases. It requires a barrister who accepts public access instructions to ‘forthwith notify his public access client in writing, and in clear and readily understandable terms’ of eight things. These are set out in sub-rules 1 to 4 and 6 to 9 in rC125 and include the work the barrister has agreed to perform, the fees he or she is charging, contact details and complaints procedure. Sub-rule 5 sets out an additional requirement which applies only in intermediary cases.

7. The usual way barristers comply with rC125 is to send a client care letter incorporating the required information. Indeed, rC126 confirms that, save in exceptional circumstances, a barrister will have complied with the above requirements if he has written promptly to the public access client in the terms of the model letter provided on the BSB website. Therefore if you do not use the BSB model version you should ensure that your client care letter includes the matters required by rC125.

8. One of the eight requirements relates to the conduct of litigation. Rule C125.3 states:

*‘unless authorised to conduct litigation by the Bar Standards Board, the fact that you cannot be expected to perform the functions of a solicitor or other person who is authorised to conduct litigation and in particular to fulfil obligations arising out of or related to the conduct of litigation’*

9. If you use the BSB model letter, paragraphs 7 and 8 will need tailoring depending on whether you are or are not authorised to conduct litigation.

10. Rule C125.9 (which applies to public access cases) and rC99 (which applies generally) requires you to give details of your complaints procedure. Rule C99 says:

*‘You must notify clients in writing when you are instructed, or, if that is if not practicable, at the next appropriate opportunity:*

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*.1 of their right to make a complaint, including their right to complain to the Legal Ombudsman (if they have such a right), how, and to whom, they can complain, and of any time limits for making a complaint.'*

11. Some clients will have the right, if they are not satisfied with the way you deal with the complaint in house, to take the complaint to the Legal Ombudsman. However, most businesses do not have this right. Paragraph 18 of the template letter annexed to this paper contains a suggested form of wording which makes it clear that not all clients can use the Legal Ombudsman scheme.

### **Other requirements**

#### Consumer Contract Regulations 2013

12. If your public access client is a consumer, the Consumer Contract (Information, etc.) Regulations 2013 will apply to the contract. A consumer is defined as someone acting wholly or mainly outside of their trade, business, craft or profession. The Regulations give consumer clients certain rights including, depending upon where the contract was concluded, a 14-day cooling-off period during which they can cancel the contract.

13. The Bar Council has produced detailed guidance<sup>3</sup> on how these Regulations affect barristers. Anyone contracting directly with clients who are individuals is advised to familiarise themselves with the Regulations and this guidance. A failure to comply with the Regulations can, in certain circumstances, amount to a criminal offence. The Bar Council's guidance also suggests that a serious failure to comply with the Regulations may amount to misconduct.

14. The Regulations require you to give consumer clients certain information, including where appropriate information about the right to cancel. Some of these are covered in any event by the requirements of rC125 (for example, details about fees and complaints procedure). The additional information requirements, which are summarised in the bullet points below, have been incorporated into the BSB model letter:

- Geographical address, telephone, fax and email.

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<sup>3</sup> Available at <http://www.barcouncilethics.co.uk/documents/consumer-contracts-information-etc-regulations2013/>

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- Information on the conditions, time limits and procedure for exercising a right to cancel.
- Notification that if the client expressly asks you to start work within the cancellation period, he will be responsible for paying the reasonable costs of your services.
- Circumstances in which the right to cancel may be lost.
- Model cancellation form.
- The time by which you undertake to perform the services.
- Information on how you client can obtain a copy of the Code of Conduct.

15. If the cancellation rights under the Regulations apply, you should not do any work for your client within the 14-day cooling off period unless you have an express request from your client to do so. For those contracts categorised by the Regulations as ‘off-premises’ this request must be made on a ‘durable medium’ which includes paper, fax and email. Further details are set out in the Bar Council’s guidance paper on the Regulations, which indicates that the use of a tick-box option in a client care letter which the client signs and returns to you<sup>4</sup> can satisfy this requirement.

### Provision of Service Regulations

16. The Provision of Service Regulations 2009 require a barrister to ‘make available’ certain information to his lay client. This applies whether a barrister is instructed directly or by an instructing solicitor. Detailed guidance as to how these Regulations affect barristers is available on the Bar Council’s website<sup>5</sup>

17. Many of these requirements are replicated in Rule C125 (e.g. providing a geographical address, legal status, details of service to be provided, price, complaints procedure, etc.). In most cases the only additional requirements will be:

17.1. Professional title (barrister, KC)

17.2. VAT registration number

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<sup>4</sup> As to signing and returning letters generally, see paragraph 30 below.

<sup>5</sup> [www.barcouncilethics.co.uk/documents/provision-services-regulations-2009/](http://www.barcouncilethics.co.uk/documents/provision-services-regulations-2009/)

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17.3. Registered name on BSB register

17.4. Any choice of law or jurisdiction (NB: the BSB model letter includes a provision that any disputes will be determined by the law of England and Wales)

17.5. That the barristers have professional liability insurance provided by the Bar Mutual Indemnity Fund Limited; contact details for the Bar Mutual; and a statement of the territorial coverage of the Bar Mutual insurance cover held.

18. This information must be ‘made available’ to the lay client before the contract is concluded or the service is provided. The Bar Council’s guidance suggests this will often be done by including this information on your Chambers’ website. However that is not the only method. Some barristers include this information in their client care letter. Annexed to this paper is a draft template letter and wording used in paragraph 1 of the ‘Terms of Engagement’ may be used or adapted to give information required by the Provision of Service Regulations.

#### Confidentiality, data protection (GDPR) and document retention

19. Core Duty 6 in the Code of Conduct requires you to keep the affairs of every client confidential. The BSB model letter makes it clear to the lay client that you will comply with this duty and will only disclose information to others if the client consents or you are under a legal obligation to do so.

20. On 25 May 2018, the General Data Protection Regulation (GDPR) came into force, replacing the Data Protection Act 1998. The GDPR covers the ‘processing’ of ‘personal data’ as defined in the Regulation. Barristers who process personal data, whether that relates to their own client or another individual, are data controllers under the Regulation. A full explanation of the GDPR’s requirements is beyond the scope of this paper. Barristers should refer to the Bar Council’s comprehensive GDPR guidance.<sup>6</sup> However, as the GDPR requires data controllers to provide certain notifications to persons whose personal data they collect or process, this guidance addresses how they may be provided within or alongside client care letters.

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<sup>6</sup> <http://www.barcouncilethics.co.uk/documents/gdpr-guide-barristers-chambers/>

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21. Any new clients taken on after 25 May 2018 must be provided with information prescribed by Article 13 of the GDPR at the time their personal data is collected.<sup>7</sup> This is known as a privacy notice. Existing clients will need to be given notice of this kind at such time as any *additional* personal data is collected from them. A privacy notice should be written in clear and truthful language and contain the following information:

- the categories of data collected / processed
- why the data is collected (purpose)
- how the data is used (processed)
- the lawful basis for processing the data
- how the data is stored and how long for, and how security is ensured
- who / which organisations data is shared with and why
- what those organisations will do with the data
- individuals' rights over their data (including right of access)
- contact details (for queries)

A template privacy notice prepared by Riliance, consultants who have been working on the GDPR with the Bar Council, is attached at Annex B. It is envisaged this template will be tailored to suit the individual circumstances of the case. The approach we have suggested in the attached template letter is to signpost to your privacy notice. You would then provide the privacy notice as an annex to the letter or a link to your website. Alternatively you could incorporate your privacy notice information within the body of the letter (though this carries the risk of making the letter confusingly long).

22. Moreover, where you envisage outsourcing any support services to other persons (within the meaning of rC86) or using the assistance of a pupil or devil, these need to be specified as processors in an Article 13 notice.

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<sup>7</sup> The items prescribed by Articles 13 and 14 are summarised on the ICO website: <https://ico.org.uk/fororganisations/guide-to-the-general-data-protection-regulation-gdpr/the-right-to-be-informed/what-is-the-right-to-be-informed-and-why-is-it-important/>

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23. The client care letter may have to go further and seek GDPR-compliant consent from the client if you are processing personal data in the Special Categories (Article 9) and processing is not necessary for the establishment, exercise or defence of legal claims (for example where advice is being given on the drafting of a will).

24. Rule C129 requires that “*you must either yourself 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*”: Whilst this permits the retention of the papers by the lay client, there is no guidance as to what might constitute “reasonable steps to ensure”. The final decision has to be that of the barrister, but a barrister should be aware of the risks of a client failing to keep all the necessary papers for the full 7 years. The retention of papers requirement includes instructions, written advices or other paperwork, notes of advice given in conference or over the telephone and ‘the originals, copies or a list of all documents enclosed with any instructions’. The GDPR only permits you to retain personal data for as long as is necessary for the purposes of your processing. For more detailed information on this see the Bar Council’s Data Retention Policy guidance.<sup>8</sup> Whilst retention for 7 years can be justified, given that it is mandatory under rC129, it may be difficult to justify keeping personal data for a period longer than this. As a matter of good practice you should set out the maximum retention period in your client care letter or accompanying privacy notice.

25. Rule C131 provides:

*‘Save where otherwise agreed:*

*.1 a barrister shall be entitled to copy all documents received from his lay client, and to retain such copies permanently;*

*.2 a barrister shall return all documents received from his lay client on demand, whether or not the barrister has been paid for any work done for the lay client’*

The model letter is drafted on the bases set out in sub-rules 1 and 2 above. However, it is clear from the stem of the rule that it is possible to agree with your client alternative provisions relating to retaining or returning documents, and if so these ought to be set out clearly in your client care letter. You may also want to consider

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<sup>8</sup> <http://www.barcouncilethics.co.uk/documents/data-retention-policy/>



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including provision for the payment of reasonable photocopying costs in the event that you are required to make copies of documents in order to retain or return them.

## **Other points**

### Legal aid and alternative funding

26. There is no longer an absolute prohibition on barristers being directly instructed by clients who are likely to be eligible for public funding (aka legal aid). Since 2013 the operative rule has been Rule C120.3 which requires you to:

*'Take such steps as are reasonably necessary to ensure that the client is able to make an informed decision about whether to apply for legal aid or whether to proceed with public access.'*

27. There are six paragraphs in the model letter under the heading 'Legal Aid'. Although there is no obligation under rC125 to include these paragraphs in your client care letter, in a case where your client may be eligible for public funding it would be sensible to do so. However, simply incorporating these paragraphs into your client care letter is unlikely of itself to satisfy your obligation under rC120.3 if your client is likely to be eligible for public funding.

28. On the other hand, if there is no prospect that your client could obtain public funding - for example, if you are acting for a business client in a commercial dispute – then you may leave these paragraphs out of your client care letter.

29. It is considered good practice to discuss with your client whether they have an alternative means of funding their legal representation, such as an insurance policy or union backing<sup>9</sup>. One way of initiating that discussion might be to include a requirement in your client care letter for your client to check whether they have any alternative means of funding their case and, if so, to bring it to your attention before agreeing your terms.

### Signing and returning the client care letter

30. There is no requirement in the Public Access Rules for your client to sign and return a copy of the client care letter. The requirements in rC125 are satisfied by you

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<sup>9</sup> See BSB Public and Licensed Access Guidance for Clerks, paragraph 14.

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‘forthwith’ notifying your client of them in writing. Thus, provided your client has received an appropriate care letter, your obligations under this rule have been met.

31. However, it is clearly sensible to get your client to sign and return a copy of the letter as confirmation both of its receipt and of your client’s acceptance of your terms. It is noteworthy that in about one-third of cases where barristers have been disciplined for breaching the public access rules at least one of the charges related to failing to send a client care letter.

32. Note also that:

32.1. in cases where your client might be eligible for legal aid, paragraph 17 in the attachment in the BSB model letter envisages that your client will sign and return a copy of the letter to confirm they have made an informed decision to instruct you on a public access basis rather than take advantage of any public funding that he might be entitled to;

32.2. in a case where the client has cancellation rights under the Consumer Contract Regulations 2013, you may only provide your services during the 14 days cancellation period if the client has expressly requested you to do so (see paragraph 15 above).

33. Rule C125 requires written notification to be sent ‘forthwith’ upon accepting instructions. Rule C24 requires you to confirm acceptance of instructions and the terms or basis on which you will act before doing any work ‘unless that is not reasonably practicable, in which case you should do so as soon as reasonably practicable’. Therefore in an emergency it may be possible to do work before sending a client care letter. Even in such a case you should agree with the client what work you are going to do and what you are going to charge for it and, if at all possible, provide a draft client care letter (for example, by sending a copy of a standard template letter that you use or directing you client to the model letter on the BSB’s website).

#### Insurance and limitation of liability

34. There is no requirement in the Handbook to include details of your BMIF insurance in your client care letter. However you are required to notify your public access client that you are bound by the Code of Conduct (rC125.2) and it is a

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requirement of the Code (rC76) that that you have adequate insurance which covers the legal services you supply to the public.

35. As noted above (see paragraph 17 above), the Provision of Service Regulations require you to make details of your insurance cover available to your lay client. This requirement can be satisfied by including the relevant details in your client care letter or by posting them on your Chambers' website. The Bar Council guidance paper on these Regulations says:

*'a. Regulation 8(1)(n) requires that "where the provider is subject to a requirement to hold any professional liability insurance or guarantee" information about the insurance or guarantee must be made available "and in particular (i) the contact details of the insurer or guarantor, and (ii) the territorial coverage of the insurance or guarantee".'*

*b. The view of the Ethics Committee is that this requires the provision of information only about such insurance as is professionally compulsory i.e. the minimum cover which barristers must have as members of the Bar Mutual Indemnity Fund (currently £500,000). There is no requirement to provide information about any additional insurance or additional level of cover that a barrister may have taken out (whether with the Bar Mutual or with other insurers); and indeed there is no requirement to specify the level of cover which is professionally required; though this will be apparent from the Terms of Cover which appear on the Bar Mutual Website.'*

36. Some barristers include clauses in their client care letters seeking to limit their liability to their clients to a specified sum in the event they are found to have been negligent or in breach of contract. The BSB had previously issued guidance which said that there is nothing in the Code of Conduct to prevent barristers limiting their liability in ways which are permitted at law but also pointing out that this is a complex issue. That guidance document, called 'The extent to which a barrister can limit their indemnity insurance liability', is no longer on the BSB website.

37. The SRA expressly prohibits regulated firms from excluding or attempting to exclude liability below the minimum level of cover required by the SRA Indemnity Insurance Rules. It is suggested that you approach the question of a limitation of liability clause with great care bearing in mind:

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37.1. it may be difficult to justify a clause limiting your liability to a level below that of your insurance cover<sup>10</sup>; and

37.2. your level of cover should normally be adequate to cover the services you are supplying.

#### Fee disputes and confidentiality

38. The Bar Council's practice paper on 'Fee Disputes and Privilege/Confidentiality'<sup>13</sup> says you may wish to consider inserting the following in contracts with public access clients:

(a) A term stating that fee notes may be disclosed to a debt recovery agency to the extent necessary in order to recover unpaid fees; and

(b) A term stating that privileged documents can be referred to, disclosed and adduced as evidence in court or in an arbitration by the barrister or the public access client in the event of litigation or a dispute between them, insofar as may be necessary for the barrister to protect or defend his/her interests. You should also consider providing to your public access clients a note or other explanatory material that explains that the above is in light of the general law that where there is litigation between a lawyer and client there is an implied waiver of privilege.

39. It is not suggested that it is a requirement in every case to include such terms. Clearly (a) would only be relevant if there was a possibility that you might instruct a debt recovery agency. The BSB model letter includes a clause stating that confidential information can be disclosed in accordance with statutory or other legal requirements. You may feel that this is sufficient to cover (b) above or you may take the view that the contract should specifically state that privilege will be waived in the event of a dispute over fees.

#### Mini-pupils and confidentiality

40. Unlike pupils, mini-pupils are not subject to the professional obligations imposed on barristers by the BSB Handbook. In particular that means a mini-pupil is not under the duty of confidentiality set out in Rule C15.5 and Guidance C46. Certain

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<sup>10</sup> Under the SRA Indemnity Insurance Rules.

<sup>13</sup> <http://www.barcouncilethics.co.uk/documents/fee-disputes-privilegeconfidentiality/>

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safeguards therefore have to be put in place to protect confidential information, which include obtaining informed consent from your client to disclose information to a mini-pupil.

41. Guidance on the proper approach is contained in the Bar Council's practice paper 'Mini-pupils'<sup>11</sup>. This paper suggests that informed consent may be obtained by inserting an appropriate provision in your contractual terms, which in a public access case will be in your client care letter. The paper also suggests wording that may be used. You should refer to this guidance if you are being shadowed by a mini-pupil to ensure you are complying with your obligations.

#### Money Laundering etc. Regulations 2017

42. In many cases where barristers are instructed on a public access basis, and in particular where litigation is on foot or contemplated, it will not be necessary to do the money laundering checks on your client. This is because the requirements of these Regulations only apply to barristers giving tax advice or who are assisting in the planning or execution of the following transactions:

42.1. the buying and selling of real property or business entities;

42.2. the organisation of contributions necessary for the creation, operation or management of companies

42.3. the creation, operation or management of trusts, companies or similar structures.

43. Detailed information for barristers on the application of the Money Laundering Regulations is contained in the Bar Council's paper on Money Laundering, Terrorist Financing and the Proceeds of Crime<sup>12</sup>.

44. To accommodate the possibility that it may be necessary in some cases to ask your client to provide evidence of identity to satisfy the requirements of these Regulations, it may be prudent to include a warning to that effect in your client care letter.

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<sup>11</sup> <http://www.barcouncilethics.co.uk/documents/mini-pupils-implications-practice/>

<sup>12</sup> [http://www.barcouncilethics.co.uk/wp-content/uploads/2017/10/Legal-Sector-AML-Guidance-Part-2a\\_April-2021.pdf](http://www.barcouncilethics.co.uk/wp-content/uploads/2017/10/Legal-Sector-AML-Guidance-Part-2a_April-2021.pdf)

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### Outsourcing

45. Barristers are permitted to engage third parties, such as litigation assistants or research assistants, to assist them in carrying out their instructions. In such circumstances, you should ensure you are familiar with rC86 on 'Outsourcing'. The Bar Council has produced a guidance paper on 'Outsourcing and the use of litigation assistants'<sup>13</sup> to which reference ought also to be made. In particular, it is important to ensure your agreement with the third party to whom you have outsourced the work complies with the requirements of rC86 as to confidentiality, data protection, your duties under the Handbook and Code of Conduct and investigations by the BSB.

46. The BSB model letter is drafted on the basis that you will not outsource any of the work you are instructed to do. Paragraph 1 of the attachment says 'I am the only person you are instructing and I will personally do all the work needed under this arrangement'. Thus, you should not outsource work without making appropriate amendments to the model letter. A suggested form of words is included in the draft letter annexed to this paper<sup>14</sup>. Your duty not to mislead your client is likely to require you to be open and transparent in your client care letter about any proposed outsourcing arrangement.

### Repeat business and ongoing retainers

47. The BSB Public Access Scheme Guidance for Barristers<sup>15</sup> makes it clear that it may not be necessary to send a full version of the client care letter when you have repeat business from a client in respect of a matter you have previously been instructed upon. Paragraph 30 of the Guidance says:

'where the client has previously instructed you in respect of the same matter it may well be unnecessary for you to provide a full client care letter in respect of every new instruction received. Barristers must still ensure that the fundamentals of the client care letter are set out in respect of each new instruction i.e. the work that is to be undertaken, the cost and the payment mechanism. Other matters which you are required to inform your client about, such as the barrister's limitations (if any) with respect to litigation, how to

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<sup>13</sup> <http://www.barcouncilethics.co.uk/documents/outsourcing-use-litigation-assistants/>

<sup>14</sup> Paragraph 4 of the Terms of Engagement.

<sup>15</sup> [Public-Access-Guidance-for-Barristers.pdf \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk/public-access-guidance-for-barristers.pdf)

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complain and the fact the barrister may have to withdraw can be covered by referring the client to the original client care letter.'

48. Note however that each new instruction is likely to be regarded as a new contract. Therefore if the Consumer Contracts Regulations 2013 apply you will need to provide the required information each time you accept a new instruction. The same may apply to the information that you are required to give to comply with the Provision of Service Regulations 2009. Therefore the safer course may be to supply a full client care letter for each instruction.

49. Some barristers try to avoid the need to repeatedly send out client care letters by agreeing with their client at the outset that they carry out all the work they are instructed to do on a case for a fixed fee or, more usually, at a specified hourly rate. This is not prohibited by the BSB Guidance which states at paragraph 31:

'It may also be possible in limited circumstances for you to enter into a retainer or novel fee arrangement with a public access client. However, care should be taken to ensure you continue to observe your general Handbook duties around independence and conflict of interest.'

50. It is suggested that caution should be exercised before entering into such an arrangement for two reasons:

50.1 You are required to set out in clear and readily understandable terms the work you have agreed to perform for your client (Rule C125.1). It may be difficult to word a general retainer in such a way as provides both you and your client with clarity about what work you are actually agreeing to do.

50.2 There may be scope for confusion between you and your client as to what responsibilities you have taken on.

### Escrow accounts

51. The use of an escrow service is permitted by rC74. The essence of the arrangement is that your client deposits a sum of money into an escrow account, thereby giving you the security of knowing that funds are held in escrow and available to meet your fees when they fall due. This might be particularly useful where you have agreed an hourly rate to do work for your client but you do not know how long that work will take; or you have agreed a daily rate to represent a client at trial but you cannot tell in advance how long the trial will last. Provided you comply with rC74

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and rC75 and the associated guidance in gC108-111, such an arrangement will not breach the rule prohibiting you from holding client money.

52. You are required to set out in writing the terms on which you are acting (rC22). Therefore if it is a condition of your instructions that your public access client uses an escrow payment service this ought to be set out in your client care letter. The details of the arrangement (for example, as to how much must be deposited) will vary from case to case; however, a suggested form of words is as follows:

‘In order to ensure funds are available to meet my fees when they fall due in accordance with this agreement, you and I agree that you will open a [*Insert escrow service*] account with [*Insert service provider*] and deposit into that account the sum of £..... on or before ..... You and I agree that we will execute such documents and provide such information to [*Insert escrow service*] as it may reasonably require and that we will be bound by the terms and conditions of [*insert escrow service*]. Payment of my fees may then be made from the [*Insert escrow service*] account in accordance with the terms of this agreement and of the [*Insert escrow service*] terms and conditions.’

53. A separate guidance paper on the use of escrow services in public access cases is available on the Ethics hub.<sup>16</sup>

### Costs warning

54. There does not appear to be any general duty to warn a public access client (either in the client care letter or otherwise) that the fees they pay you may not be recovered from the other side, even if they are successful.

55. In *May v Wavell Group plc*<sup>17</sup>, Master Rowley suggested, obiter, that in a civil case a barrister instructed to conduct the litigation should warn his client that disproportionate costs will not be recovered. In the majority of public access cases, however, the barrister is not instructed to conduct the litigation. The lay client should be capable of managing his own case (see oC32, Public Access Rules).

56. It is not mandatory to provide a costs warning to your public access client though you may consider, in the circumstances of the particular case, it would be appropriate to do so. Even solicitors conducting litigation are not under a mandatory

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<sup>16</sup> <https://www.barcouncilethics.co.uk/wp-content/uploads/2021/08/Escrow-guidance-August-2021.docx.pdf>

<sup>17</sup> [2016] EWHC B16 (Costs).



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duty to warn their clients that their fees may not be recovered. There may, though, be situations where you should give your client a costs warning. This is likely to include, as in *May v Wavell Group plc*, where you are instructed to conduct the litigation and your overall fees are likely to be disproportionate to the potential damages. It would doubtless also include situations where the scope of your instructions requires you to give your client advice about the possible costs implications of the litigation. In addition, a barrister may remind a client that the barrister's fees remain payable notwithstanding any costs orders which may be made by the court.

### The ADR Regulations

57. The EU Directive on alternative consumer dispute resolution came into force on 1 October 2015<sup>18</sup>. Put simply, this requires you to inform a consumer client whether you are willing to submit a dispute to ADR and identify an approved ADR body. However, this requirement only arises if you have been unable to resolve a complaint to the client's satisfaction through your Chambers' complaints procedure. There is therefore no need to include this information in a client care letter.

### Liens

58. The BSB Guidance states:

'We are not aware of any authority by which barristers gain a general lien on documents belonging to the client until the fees are paid, although there seems to be nothing in the law to invalidate an express agreement made between a barrister and a client permitting the barrister to exercise such a lien.'

59. Whilst it seems that it may be possible for a barrister to agree a lien with their public access client, caution should be exercised. Further guidance on this issue is contained in the Public Access FAQs on the Ethics hub<sup>19</sup>.

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<sup>18</sup> Implemented into UK law by The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. Available at [The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukreg/2015/1000/2015-10-01/1).

<sup>19</sup> [www.barcouncilethics.co.uk/documents/public-access-faqs/](https://www.barcouncilethics.co.uk/documents/public-access-faqs/)

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## **Business clients**

60. As noted above, the terms of the BSB's model client care letter are more appropriate for a client who is an individual than a corporate or business client. Annex A to this paper is a suggested draft for a client care letter which can be sent to a business client. The main differences from the BSB's model letter are:

60.1. It is assumed for the purposes of the attached draft that the client will not fall within the definition of 'consumer' in the Consumer Contract Regulations 2013. Therefore the parts of the model letter which relate to the requirements of these Regulations have been excluded.

60.2. It is also assumed that there is no likelihood the client will be eligible for public funding. Therefore the section in the model letter under the heading 'Legal Aid' has been excluded.

60.3. The Legal Ombudsman scheme is mainly for the benefit of individuals and does not apply to most businesses. The attached draft makes this clear.

61. A number of factors have to be considered when drafting a client care letter and it follows that whilst the attached draft may be appropriate for some clients it will not necessarily suit all situations.

## **Important Notice**

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it. It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see [here](#).

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## ANNEX A

### Draft client care letter to business client

[Barrister's contact details: address, telephone number, email, fax]

Date

Name and address of client

Dear

Letter of engagement between Counsel [name of barrister] and client [name of client]

Thank you for your instructions received by [letter, email, telephone, etc.] on [date].

This letter of engagement and the attached terms of engagement set out the basis on which I will act for you. 'You' in these documents means [name of client]. It is important that you understand these documents as they will form a contract between us.

#### **The work I will carry out**

The work you are instructing me to carry out is .....

If you wish me to do further work on this matter, there will be another letter of engagement between us. Please note however that I cannot at this stage confirm that I will be able to accept instructions for all subsequent work that may be required by your case.

#### **My fees for this work**

My fee for this work will be ..... Payment of this fee is required in advance and therefore I will only be able to accept these instructions on the basis that this amount is received by me as cleared funds not later than ..... If you

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wish to pay by bank transfer [my account details/my Chambers' bank account details] are as follows:

Sort code: .....

Account name: .....

Account number: .....

**If you are dissatisfied with the service you receive**

If, for any reason, you are unhappy with the service you receive my Chambers has a complaints process that you may follow. Further details about what to do if you have a complaint are set out in the terms of engagement attached to this letter.

**Sign and return a copy**

Please read this letter and the attached terms of engagement carefully. If you have any queries or comments please do not hesitate to contact me. If you are happy for me to accept your instructions on the terms set out in this letter and the attached terms of engagement, please sign a copy of this letter in the space provided below and return it to me. If the person who signs this letter is doing so in a representative capacity (for example as an officer of a company) they confirm by signing below that they have authority to enter into this agreement on behalf of the client named in this letter.

Yours sincerely

.....

**For you to complete and return one signed copy:**

..... [name of signatory] (on behalf of [name of client])

..... date

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## Terms of engagement

### **My details**

1. My name and professional title is ..... and I am registered with the Bar Standards Board under that name. I hold a current Bar Council practising certificate. I have professional indemnity insurance with the Bar Mutual Indemnity Fund, 90 Fenchurch Street, London EC3M 4ST. My practising address and contact details are as set out on my letterhead. You can also contact my clerks at the same address and telephone number or by email to ..... My VAT number is .....

### **My professional obligations**

2. I have carefully considered your instructions and can confirm that I have sufficient experience and competence to undertake the work necessary to carry out those instructions.
3. I am a self-employed barrister, and although I practise with other barristers from the Chambers of ..... I am not employed by a regulated entity (which is defined as a BSB entity or authorised (non-BSB) body). A Barristers Chambers is a practice where a collection of independent self-employed barristers share premises and administrative services. Those administrative services are provided by staff that we call clerks. My work may mean that I am not always in Chambers or that you are not able to contact me directly. You may find the best way to contact me is to leave a message with my clerks either by telephone or by email and I will respond as soon as I am able to do so.
4. A Barristers Chambers is not a firm. I am the only person you are instructing and I will be personally responsible for doing all the work needed under this arrangement. **[If outsourcing is contemplated:** I may engage somebody else to assist me in carrying out your instructions by providing support services which are critical to the delivery of that work. This is known as outsourcing. I will only outsource work where:
  - (a) I consider that it your interests to do so;

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- (b) I have not misled you about the services I am supplying, who will carry out the work involved and the basis on which you are being charged for the services. This may and usually will mean that I will tell you in writing in advance, either in my letter of engagement or otherwise, what work I am proposing to outsource, to whom and on what terms;
  - (c) I have ensured that the person I outsource the work to is competent and capable and is under the same duties to you as I am in respect of confidentiality, data protection and any other relevant professional obligations;
  - (d) I have discussed with you any concerns or queries you have about the possibility work may be outsourced, I have not engaged anyone to whom you have a reasonable objection and, where it is appropriate to do so, I have got your written consent to the proposed outsourcing arrangement.]
5. As a barrister, I must follow the Bar Code of Conduct. I must also comply with the Scope of Practice and Authorisation Rules which govern barristers. The Code of Conduct and the Scope of Practice and Authorisation Rules are contained in Parts 2 and 3 of the Bar Standards Board Handbook. I can supply you with a copy of this Handbook on request or you can find it on the Bar Standards Board website at:
- [www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/](http://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/)
6. If I have accepted your instructions, the only circumstances in which I can cease to act for you and return your instructions are set out in rules C25 and C26 in the Code of Conduct. These include where I am prevented from completing work I have agreed to do by reason of my professional duties or where I have conflicting professional obligations. In these circumstances:
- (a) I will either obtain your consent to my ceasing to act and returning your instructions or I will clearly explain to you the reasons for doing so;
  - (b) I will not pass your instructions on to another person without obtaining your consent;
  - (c) If I am unable to carry out work I have agreed to do due to a clash of professional commitments I will warn you as soon as possible. If that is

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so I will suggest the name of 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 want to instruct that barrister. If there is not a suitable barrister within my Chambers, or if you do not want my Chambers to continue working on your case, I will suggest how you may contact barristers from other Chambers who may be able to take on your instructions.

7. My Code of Conduct requires me to consider whether a solicitor needs to be instructed in your own interests or the interests of justice. If there comes a point at which I consider you need a solicitor I will no longer be able to act for you without the involvement of a solicitor. If I foresee that situation arising, I will give you as much notice as possible.

#### **The basis on which I carry out professional work**

8. Barristers can advise on the law, draft documents for their client or send letters on their behalf and represent them before courts or other tribunals or in settlement discussions. Barristers do not handle client money or undertake the management or general conduct of a client's affairs. The Bar Standards Board's Guidance for Lay Clients gives more information about the sort of work that barristers do and your relationship with your barrister. I can provide you with a copy of the Guidance for Lay Clients on request or you can find it on the Bar Standards Board's website at:

<https://www.barstandardsboard.org.uk/regulatory-requirements/bsbhandbook/public-access-guidance-for-lay-clients/>

9. The work you are instructing me to carry out and the fee I will charge are set out in the covering letter of engagement. If you wish to instruct me to do further work and I agree to do it there will need to be another letter of engagement between us. The terms set out in this attachment will, unless otherwise agreed, apply to any other work you instruct me to carry out in the future.
10. I am not authorised to conduct litigation and I cannot handle money on your behalf. That means if your case involves proceedings before a court in England and Wales: **[Alternatively:** I am authorised by the Bar Council to conduct litigation. However, I have not agreed to conduct your litigation and I cannot



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handle money on your behalf. That means if your case involves proceedings before any court in England and Wales, and unless we specifically agree otherwise in writing:]

- (a) You will have conduct of your case as a litigant-in-person;
  - (b) I am not undertaking the general management of your case or taking on any arranging role in respect of the case;
  - (c) I cannot be expected to perform the functions of a solicitor or other person who is authorised to conduct litigation. That means I will not, for example, do any of the following: issue proceedings; acknowledge service of proceedings; serve formal documents; go on the court record or give my Chambers' address as the address for service; fulfil limitation obligations, disclosure obligations or other obligations arising out of or related to the conduct of litigation.
  - (d) You must be able to do whatever is necessary for the general management of your case and you must be able to perform the functions, with appropriate help if necessary, that a solicitor or other authorised litigator would normally carry out when conducting litigation.
11. If I have required my fee to be paid in advance or you have agreed to do so then it is a condition of our arrangement that I cannot do any work for you until that payment has been made. For the avoidance of doubt, therefore, I am not instructed by you until I have received from you a signed copy of the letter of engagement and, if payment has been required in advance, that payment has been received by me.
12. If you owe me any fees and do not pay them for more than three months after those fees become due, interest will be payable at 2% above the Barclays Bank base rate from the date that the you became liable to pay those fees.

### **Confidentiality and documents**

13. I will use the information you provide me with for the purposes of carrying out your instructions, providing legal services to you and in order to maintain client records and produce management data. Insofar as I obtain personal data from you I will handle it in accordance with my Privacy Notice, which is [enclosed

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with this letter / available at [link]]. I will comply with my professional duty to keep that information confidential and any legal duties I have in relation to that information (such as under the General Data Protection Regulation and Data Protection Act 2018). I will only disclose the information you give me if:

- (a) you consent to me doing so;
- (b) it is necessary for me to do so in order to carry out your instructions (for example, providing information to a court or another party to a case);
- (c) it is already in the public domain; or
- (c) I am under a legal or professional obligation or entitlement to do so.

14. You and I agree that:

- (a) I am entitled to keep any documents you give me for my own professional records and/or make copies of those documents.
- (b) I will normally retain any documents you give me, or a list of them, for at least seven years from the date of the last work I do for you. After that period I may destroy them securely. If any of the documents contain personal data for the purposes of the General Data Protection Regulation I will destroy them after any need to retain them has passed.
- (c) You will provide me with copies of documents rather than originals. In the event that a document is not capable of being copied you will contact my clerks to make arrangements for the delivery and safe return of the document.
- (d) I am not obliged to return documents to you and therefore you should keep copies of the documents that you provide me with.
- (e) If I need to make copies of documents that you supply me with for any reason or I agree to copy documents for you I may charge you a reasonable amount for doing so.

15. In certain circumstances, the Money Laundering Regulations 2007 require me to obtain evidence to verify the identity of my clients and people related to them (such as beneficial owners). If this applies in your case I will ask you to provide

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the necessary evidence and I will be obliged to keep copies of it for at least five years.

### **Applicable law**

16. This contract and any disputes relating to it will be governed by the law of England and Wales.

### **Complaints**

17. I hope you will be happy with the professional services 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. A copy of my Chambers' complaints procedure is available at on my Chambers' website at ..... or I can send you a copy by email or post if you wish me to do so.

18. If you are not satisfied with the way my Chambers' handles your complaint you may be able to ask the Legal Ombudsman to consider your complaint. The Legal Ombudsman is a free, impartial and independent service set up by the Government to help resolve disputes about legal services. However you should note that not all clients have the right to make a complaint to the Legal Ombudsman and those excluded from the scheme include:

- most businesses (unless they are defined as micro-enterprises)
- charities or clubs with an annual income of more than £1m
- trustees of trusts with an asset value of more than £1m.

19. Normally you must bring a complaint to the Legal Ombudsman within six months of receiving a final response to your complaint from myself or from my Chambers (provided the response specifically notifies you of your right to complain to the Ombudsman and of the six month time limit). The Legal Ombudsman expects complaints to be made to them within a year of the date of the act or omission about which you are concerned or within a year of you realising there was a concern.

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20. Further details about how to make a complaint to the Legal Ombudsman, including details of those eligible to bring a complaint and the relevant time limits, can be found on the Legal Ombudsman's website ([www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)) or by contacting:

Legal Ombudsman  
PO Box 6806  
Wolverhampton  
WV1 9WJ

Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

Phone: 0300 555 0333, Minicom: 0300 555 1777

## ANNEX B

### Privacy Notice - General Data Protection Regulation ("GDPR")

Please read the following information carefully. This privacy notice contains information about the information collected, stored and otherwise processed about you and the reasons for the processing. It also tells you who I share this information with, the security mechanisms I have put in place to protect your data and how to contact me in the event you need further information.

#### Who Am I?

*[Insert name]* collects, uses and is responsible for personal information about you. When I do this I am the 'controller' of this information for the purposes of the GDPR and the Data Protection Act 2018.

If you need to contact me about your data or the processing carried out you can use the contact details at the end of this document.

#### What do I do with your information?

Information collected

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When carrying out the provision of legal services or providing a reference I collect some or all of the following personal information that you provide:

[DELETE AS APPROPRIATE]

- a. personal details
- b. family details
- c. lifestyle and social circumstances
- d. goods and services
- e. financial details
- f. education, training and employment details
- g. physical or mental health details
- h. racial or ethnic origin
- i. political opinions
- j. religious, philosophical or other beliefs
- k. trade union membership
- l. sex life or sexual orientation
- m. genetic data
- n. biometric data for the purpose of uniquely identifying a natural person
- o. criminal proceedings, outcomes and sentences, and related security measures
- p. other personal data relevant to instructions to provide legal services, including data specific to the instructions in question.

#### **Information collected from other sources.**

The same categories of information may also be obtained from third parties, such as other legal professionals or experts, members of the public, your family and friends, witnesses, courts and other tribunals, investigators, government departments, regulators, public records and registers,

[FILL IN ANY ADDITIONAL SOURCES. DELETE ANY INAPPROPRIATE SOURCES]

#### **How I use your personal information: Purposes**

I may use your personal information for the following purposes:

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- i. to provide legal services to my clients, including the provision of legal advice and representation in courts, tribunals, arbitrations, and mediations
- ii. to keep accounting records and carry out office administration
- iii. to take or defend legal or regulatory proceedings or to exercise a lien
- iv. to respond to potential complaints or make complaints
- v. to check for potential conflicts of interest in relation to future potential cases
- vi. to promote and market my services
- vii. to carry out anti-money laundering and terrorist financing checks
- viii. to train other barristers and when providing work-shadowing opportunities
- ix. to respond to requests for references
- x. when procuring goods and services
- xi. to publish legal judgments and decisions of courts and tribunals
- xii. as required or permitted by law.

[DELETE AS NECESSARY/INSERT ADDITIONAL PURPOSES, AS REQUIRED]

### **Whether information has to be provided by you, and why**

If I have been [*instructed by you or on your behalf on a case or if you have asked for a reference*], your personal information has to be provided, to enable me [*to provide you with advice or representation or the reference, and to enable me to comply with my professional obligations, and to keep accounting records*]. [COMPLETE AS APPROPRIATE]

### **The legal basis for processing your personal information**

I rely on the following as the lawful bases on which I collect and use your personal information:

- If you have consented to the processing of your personal information, then I may process your information for the Purposes set out above to the extent to which you have consented to me doing so.
- If you are a client, processing is necessary for the performance of a contract for legal services or in order to take steps at your request prior to entering into a contract.

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- In relation to information which is in categories (g) to (o) above (these being categories which are considered to include particularly sensitive information and which include information about criminal convictions or proceedings) I rely on your consent for any processing for the purposes set out in purposes (ii), (iv), (vi), (viii) and (ix) above. I need your consent to carry out processing of this data for these purposes. However, if you do not consent to processing for purposes (iv) and (ix) (responding to potential complaints and providing a reference) I will be unable to take your case or to provide a reference. This is because I need to be able to retain all the material about your case until there is no prospect of a complaint and to provide an informed and complete reference.
- In relation to information in categories (g) to (o) above (these being categories which are considered to be particularly sensitive information and include information about criminal convictions or proceedings), I am entitled by law to process the information where the processing is necessary for legal proceedings, legal advice, or otherwise for establishing, exercising or defending legal rights.
- In relation to information which is not in categories (g) to (o) above, I rely on my legitimate interest and/or the legitimate interests of a third party in carrying out the processing for the Purposes set out above.
- In certain circumstances processing may be necessary in order that I can comply with a legal obligation to which I am subject (including carrying out anti-money laundering or terrorist financing checks).
- The processing is necessary to publish judgments or other decisions of courts or tribunals.

### **Who will I share your personal information with?**

If you are a client, some of the information you provide will be protected by legal professional privilege unless and until the information becomes public in the course of any proceedings or otherwise. As a barrister I have an obligation to keep your information confidential, except where it otherwise becomes public or is disclosed as part of the case or proceedings.

It may be necessary to share your information with the following:

- data processors, such as my Chambers staff, IT support staff, email providers, data storage providers [*FILL IN ANY OTHERS*]
- other legal professionals
- experts and other witnesses

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- prosecution authorities
- courts and tribunals
- the staff in my chambers
- trainee barristers
- lay clients
- family and associates of the person whose personal information I am processing
- in the event of complaints, the Head of Chambers, other members of Chambers who deal with complaints, the Bar Standards Board, and the Legal Ombudsman
- other regulatory authorities
- current, past or prospective employers
- education and examining bodies
- business associates, professional advisers and trade bodies, e.g. the Bar Council
- the intended recipient, where you have asked me to provide a reference.
- the general public in relation to the publication of legal judgments and decisions of courts and tribunals [*this requires the production of a policy document to comply with this obligation – DPA Bill sch. 1 Part 2. para. 5(1)*].

I may be required to provide your information to regulators, such as the Bar Standards Board, the Financial Conduct Authority or the Information Commissioner's Office. In the case of the Information Commissioner's Office, there is a risk that your information may lawfully be disclosed by them for the purpose of any other civil or criminal proceedings, without my consent or yours, which includes privileged information.

I may also be required to disclose your information to the police or intelligence services, where required or permitted by law.

### **Sources of information**

The personal information I obtain may include information which has been obtained from:

- other legal professionals
- experts and other witnesses
- prosecution authorities



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- courts and tribunals
- trainee barristers
- lay clients
- family and associates of the person whose personal information I am processing
- in the event of complaints, the Head of Chambers, other members of Chambers who deal with complaints, the Bar Standards Board, and the Legal Ombudsman
- other regulatory authorities
- current, past or prospective employers
- education and examining bodies
- business associates, professional advisers and trade bodies, e.g. the Bar Council
- the intended recipient, where you have asked me to provide a reference.
- the general public in relation to the publication of legal judgments and decisions of courts and tribunals [*this requires the production of a policy document to comply with this obligation – DPA Bill sch. 1 Part 2. para. 5(1)*].
- data processors, such as my Chambers staff, IT support staff, email providers, data storage providers [FILL IN ANY OTHERS]
- public sources, such as the press, public registers and law reports.

### **Transfer of your information outside the European Economic Area (EEA)**

This privacy notice is of general application and as such it is not possible to state whether it will be necessary to transfer your information out of the EEA in any particular case or for a reference. However, if you reside outside the EEA or your case or the role for which you require a reference involves persons or organisations or courts and tribunals outside the EEA then it may be necessary to transfer some of your data to that country outside of the EEA for that purpose. If you are in a country outside the EEA or if the instructions you provide come from outside the EEA then it is inevitable that information will be transferred to those countries. If this applies to you and you wish additional precautions to be taken in respect of your information please indicate this when providing initial instructions.

Some countries and organisations outside the EEA have been assessed by the European Commission and their data protection laws and procedures found to show adequate protection. The list can be found [here](#). Most do not. If your information has

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to be transferred outside the EEA, then it may not have the same protections and you may not have the same rights as you would within the EEA.

[I may transfer your personal information to the following which are located outside the European Economic Area (EEA):

- [cloud data storage services based in the USA who have agreed to comply with the EU-U.S. Privacy Shield, in order to enable me to store your data and/or backup copies of your data so that I may access your data when they need to. The USA does not have the same data protection laws as the EU but the EUU.S. Privacy Shield has been recognised by the European Commission as providing adequate protection. To obtain further details of that protection see [https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outsideeu/eu-us-privacy-shield\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outsideeu/eu-us-privacy-shield_en).]
- [cloud data storage services based in Switzerland, in order to enable me to store your data and/or backup copies of your data so that I may access your data when I need to. Switzerland does not have the same data protection laws as the EU but has been recognised by the European Commission as providing adequate protection; see [https://ec.europa.eu/info/law/law-topic/dataprotection/data-transfers-outside-eu/adequacy-protection-personal-data-noneu-countries\\_en](https://ec.europa.eu/info/law/law-topic/dataprotection/data-transfers-outside-eu/adequacy-protection-personal-data-noneu-countries_en).]

If I decide to publish a judgment or other decision of a Court or Tribunal containing your information then this will be published to the world.

I will not [otherwise] transfer personal information outside the EEA [except as necessary for providing legal services or for any legal proceedings].

If you would like any further information please use the contact details at the end of this document.

### **How long will I store your personal data?**

I will normally store all your information:

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- [until at least 1 year after the expiry of any relevant limitation period (which will usually be 6 years, but may be 12 years, or longer where the case includes information relating to a minor), from [the date of the last item of work carried out, the date of the last payment received or the date on which all outstanding payments are written off, *whichever is the latest/whatever other end point is chosen*]. This is because it may be needed for potential legal proceedings/ other period – *provide justification*]. At this point any further retention will be reviewed and the data will be marked for deletion or marked for retention for a further period. The latter retention period is likely to occur only where the information is needed for legal proceedings, regulatory matters or active complaints. Deletion will be carried out (without further notice to you) as soon as reasonably practicable after the data is marked for deletion.
- I will store some of your information which I need to carry out conflict checks for the rest of my career. However, this is likely to be limited to [your name and contact details/ the name of the case/anything else]. This will not include any information within categories (g) to (o) above.
- [Information related to anti-money laundering checks will be retained until five years after the completion of the transaction or the end of the business relationship, whichever is the later;]
- Names and contact details held for marketing purposes will be stored indefinitely or until I [or my clerks] become[s] aware or am[/are] informed that the individual has ceased to be a potential client.

## **Consent**

As explained above, I am relying on your explicit consent to process your information in categories (g) to (o) above. You provided this consent when [you agreed that I would provide legal services/you asked me to provide a reference].

You have the right to withdraw this consent at any time, but this will not affect the lawfulness of any processing activity I have carried out prior to you withdrawing your consent. However, where I also rely on other bases for processing your information, you may not be able to prevent processing of your data. For example, if you have asked me to work for you and I have spent time on your case, you may owe me money which I will be entitled to claim.

If there is an issue with the processing of your information, please contact my clerks using the contact details below.

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## **Your Rights**

Under the GDPR, you have a number of rights that you can exercise in certain circumstances. These are free of charge. In summary, you may have the right to:

- Ask for access to your personal information and other supplementary information;
- Ask for correction of mistakes in your data or to complete missing information I hold on you;
- Ask for your personal information to be erased, in certain circumstances;
- Receive a copy of the personal information you have provided to me or have this information sent to a third party. This will be provided to you or the third party in a structured, commonly used and machine-readable format, e.g. a Word file;
- Object at any time to processing of your personal information for direct marketing;
- Object in certain other situations to the continued processing of your personal information;
- Restrict my processing of your personal information in certain circumstances;
- Request not to be the subject to automated decision-making which produces legal effects that concern you or affects you in a significant way.

If you want more information about your rights under the GDPR please see the Guidance from the Information Commissioners Office on [Individual's rights under the GDPR](#).

If you want to exercise any of these rights, please:

- Use the contact details at the end of this document;
- I may need to ask you to provide other information so that you can be identified;
- Please provide a contact address so that you can be contacted to request further information to verify your identity;
- Provide proof of your identity and address; • State the right or rights that you wish to exercise.

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I will respond to you within one month from when I receive your request.

### **Marketing Emails**

[Please note if you wish to unsubscribe from any marketing emails that you have signed up for, you can do so by following the instructions here [*insert link*]. It may take [*insert days*] for this to become effective.]

### **How to make a complaint?**

The GDPR also gives you the right to lodge a complaint with the Information Commissioners' Office if you are in the UK, or with the supervisory authority of the Member State where you work, normally live or where the alleged infringement of data protection laws occurred. The Information Commissioner's Office can be contacted at <http://ico.org.uk/concerns/>.

[DELETE UNLESS USING AUTOMATED DECISION-MAKING]

### **Automated Decision-Making**

I use automated decision making to [*explain where it is used*]. An explanation of the logic behind this decision-making can be found [*insert link*]. The significance and envisaged consequences of these decisions are [*insert consequence*].

You have the right to object to the use of your personal information for automated decision-making, please see 'your rights'.]

### **Future Processing**

I do not intend to process your personal information except for the reasons stated within this privacy notice. If this changes, this privacy notice will be amended and [placed on the website / *insert notice mechanism*].

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## Changes to this privacy notice

This privacy notice was published on *[insert date]* and last updated on *[insert date]*.

I continually review my privacy practices and may change this policy from time to time. When I do it will be *[placed on the website/ insert notice mechanism]*.

## Contact Details

If you have any questions about this privacy notice or the information I hold about you, please contact me or my clerks *[insert details]* or *[if appointed, Data Protection Officer]*.

The best way to contact me is to *[write to me at [my Chambers address] or contact [my clerks by email at email address DP@..... or by phone at [no].]*

*[If appointed*

*My EU Representative]*

*[If applicable insert details of EU representative].*

*My Data Protection Officer]*

*[Insert details of Data Protection Officer if one has been appointed].*

## Sign

Please read this privacy notice carefully and contact me if you have any queries. Please then tick the box below and sign to confirm that you have read and understood the privacy notice. If you are acting in a representative capacity (for example as an officer of a company) please also confirm that you have authority to sign on behalf of the client by ticking the second box below and signing.

I have read and understood this privacy notice

I have authority to sign on behalf of the client

Signature: .....

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Date: