



The Bar Council

Counsel's Fee Notes and Records

Purpose:	To guide barristers on how best to record their work done for fees purposes
Scope of application:	All practicing barristers
Issued by:	The Ethics Committee
First issued:	February 2014
Last reviewed:	November 2022
Status and effect:	Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.

1. All clients are entitled to know the basis on which fees are charged, not least so that they can protect their interests in respect of any assessments of costs.
2. Rule C22 in the Code of Conduct requires you to confirm in writing acceptance of instructions and the terms and/or basis on which you will be acting "including the basis of charging". Therefore, when you accept instructions, you must set out in writing either the fee you are going to charge or the basis on which the fee will be charged (e.g. hourly rate). That confirmation must be sent to your professional client (e.g. instructing solicitor) or licensed or public access client, as the case may be.
3. You are reminded that rC88 requires you to "ensure that adequate records supporting the fees charged or claimed in a case are kept" and that you "must provide your client with such records or details of the work you have done as may reasonably be required for the purposes of verifying your charges". Accordingly, in order to assist lay and professional clients, judges, costs judges and, in the event of opposed assessments of costs, lay and professional clients justifying your fees to opposing parties, you should keep an "adequate record" which supports the fee charged. That is likely to include a record of the time taken on each individual item of work done, such as:

- (i) Pleadings, indictments, or other procedural documents
- (ii) Witness statements
- (iii) Experts' reports
- (iv) Schedules
- (v) Written Advices and Opinions
- (vi) Letters
- (vii) Skeleton arguments
- (viii) Written submissions
- (ix) Preparation of Briefs, and
- (x) Conferences and telephone conferences and the preparation for such conferences.

4. You are also reminded that paragraph rC88 requires such records to be kept at least until the later of the following: "your fees have been paid", and "any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment or determination has expired without any such appeal being lodged, or any such appeal has been finally determined".

5. The following further steps are also advised as a matter of good practice:

- (i) When you are instructed orally, including by telephone, you should make a note of the nature of the instructions and of the response given;
- (ii) When you ask orally for further information, you should make a note of the nature of the request, and of the answer if the answer is given orally;
- (iii) When any particularly novel or complex issue of fact or law arises in the course of the conduct of a case, you should (unless the subject is dealt with in a written advice or opinion) make a note summarising the relevant issue or issues and the research undertaken in like manner as is required by (i) above
- (iv) When a consultation or conference takes place, unless the professional client makes an attendance note which is sent to you for approval or amendment, you should make a note of the topics covered and the general nature of the advice given;
- (v) When you are involved in negotiations, either between Counsel or by way of leading, assisting or supporting the professional client in the conduct of

negotiations, you should make a note of the general nature of the involvement, and

(vi) Notes made pursuant to subparagraphs (i) to (v) above should be kept by you unless they are returned to an instructing solicitor.

6. In cases where you do not have an instructing solicitor, it may also be advisable to keep more detailed records. Furthermore, in a public access or licensed access case you are required to keep “notes of all conferences and of all advice given on the telephone” (rules C129.4 and C141.4 respectively).

7. When a brief fee has not been agreed and is claimed by you in a sum greater than the product of an hourly rate and the number of hours actually worked in preparation of the brief, this should be recorded in a note to be submitted with the fee note. Details in the supplementary note should include, but are not limited to:

- (i) The seniority, reputation and relevant expertise of Counsel;
- (ii) The complexity of the case;
- (iii) The amount of preparation required in advance of the hearing;
- (iv) Counsel’s commitment to a fixed hearing date, if any;
- (v) The expected length of the case and, therefore, the time reserved for it in Counsel’s diary;
- (vi) The urgency of the matter when Counsel was briefed;
- (vii) The amount of work required out of Court and in the preparation of any kind of written submission during the hearing;
- (viii) The importance of the case to the parties or any of them, or to the public interest, and
- (ix) Details of any expenses incurred by Counsel.

8. When a brief fee has been agreed, you or your clerk should keep a written record of the date upon which such agreement was reached, the method by which such agreement was reached and by whom, and of the precise terms of such agreement, together with such records as will enable a note containing the details set out at paragraph 6(i) – (ix) above to be produced on request.

9. In any case in which you appear in a privately paid case at a hearing without a brief fee having been agreed you should make and keep a record of the time spent at Court and of the length of the hearing.

10. The advice above is intended to apply in all cases, but in a public access case and a licensed access case you will be subject to additional record keeping obligations. These can be found in rC128-129 for public access cases and rC140-141 for licensed access cases.

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 refer to the professional practice and ethics section of the Bar Council’s website [here](#).