



The Bar Council

## Licensed Access Terms of Work Template

<b>Purpose:</b>	To provide a working template of terms of work between a barrister and a licensed access client.
<b>Scope of application:</b>	All practising barristers instructed pursuant to licensed access.
<b>Issued by:</b>	The Direct Access Panel
<b>Originally issued:</b>	April 2018
<b>Last reviewed:</b>	July 2021
<b>Status and effect:</b>	Please see the notice at end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.

**1 Application of these terms:** These terms apply to all instructions accepted by [NAME AND ADDRESS OF BARRISTER] (“the barrister”) where the instructions are given by [NAME AND ADDRESS OF LICENSED ACCESS CLIENT] (“licensed access client”) in accordance with the terms of a licence issued or deemed to be issued by the Bar Standards Board. They apply save to the extent that they have been varied or excluded by written agreement and will apply to instructions only where the instructions have been accepted by the barrister in writing.

**2 The licence:** A copy of the licence issued to the licensed access client by the Bar Standards Board shall be sent with every set of instructions. Alternatively, the licensed access client shall specify in their instructions why they are deemed to hold a licence under the Licensed Access Recognition Regulations.<sup>1</sup>

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<sup>1</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/>

**3 Acceptance of instructions:** Notwithstanding that instructions have been delivered to the barrister, they shall not be deemed to have been accepted by them until they have satisfied themselves, that the instructions are given in accordance with the licence granted by the Bar Standards Board (or deemed licence as appropriate), by a person entitled by that licence to give those instructions, and has expressly accepted them in writing. The barrister shall state in writing when they accept the instructions and that they are accepted on the basis of these terms or, if not, the terms on which they are accepted on.

**4 The work expected of the barrister is defined by their instructions:** Instructions should only cover work permitted by the Licensed Access Rules (which form part of the Code of Conduct). The barrister must refuse instructions in the circumstances set out in Rule C21 of the Code of Conduct which are:

- (1) due to any existing or previous instructions the barrister is not able to fulfil their obligation to act in the best interests of the prospective client; or
- (2) there is a conflict of interest, or real risk of conflict of interest, between the barrister's personal interests and the interests of the prospective client in respect of the particular matter; or
- (3) there is a conflict of interest, or real risk of conflict of interest, between the prospective client and one or more of the barrister's former or existing clients, in respect of the particular matter unless all of the clients who have an interest in the particular matter give their informed consent to the barrister acting in such circumstances; or
- (4) there is a real risk that information confidential to another former or existing client, or any other person to whom the barrister owes duties of confidence, may be relevant to the matter, such that if, obliged to maintain confidentiality, the barrister could not act in the best interests of the prospective client, and the former or existing client or person to whom the barrister owes that duty does not give informed consent to disclosure of that confidential information; or
- (5) the barrister's instructions seek to limit the barrister's ordinary authority or discretion in the conduct of proceedings in court; or
- (6) the barrister's instructions require them to act other than in accordance with law or with the provisions of this Handbook; or
- (7) the barrister is not authorised and/or otherwise accredited to perform the work required by the relevant instruction; or

(8) the barrister is not competent to handle the particular matter or otherwise does not have enough experience to handle the matter; or

(9) the barrister does not have enough time to deal with the particular matter, unless the circumstances are such that it would nevertheless be in the client's best interests for them to accept; or

(10) there is a real prospect that the barrister is not going to be able to maintain their independence.

**5 Code of Conduct to prevail:** The barrister accepts instructions upon the understanding that in carrying them out he must and will comply with the Code of Conduct and the general law.

**6 Conduct of litigation:** [~~DELETE AS APPROPRIATE:~~ \*The barrister is not authorised to conduct litigation on behalf of their client OR \*The barrister is authorised to conduct litigation but has not assumed any obligation to do so unless and until that is agreed in writing.] Therefore, the barrister cannot be expected to perform the functions of a solicitor or other person who is authorised to conduct litigation (organisation and management of a case proceeding through litigation e.g. providing an address for service, filing and serving court documents, etc.) and in particular to fulfil obligations arising out of or related to the conduct of litigation.

**7 Need to instruct a solicitor:** In some circumstances, it may be in the interest of the lay client or the interests of justice to instruct a solicitor or other person authorised to conduct litigation or other appropriate intermediary together with the barrister or in their stead. This may occur at short notice or during the case. If these circumstances arise, the barrister will notify the licensed access client of this in writing as soon as practicable.

**8 Duty to the lay client:** Where instructions are given to a barrister by the licensed access client in relation to a matter concerning a lay client the licensed access client warrants that they have or will as soon as practicable:

(1) Send the lay client a copy of these terms.

(2) Advise the lay client in writing of:

(a) the effect of paragraph Rule C21 of the Code of Conduct (see Clause 4 above) as it relevantly applies in the circumstances;

(b) the fact that the barrister cannot be expected to perform the functions of a solicitor or other person authorised to conduct litigation and in particular to fulfil limitation obligations, disclosure obligations and other obligations arising out of or related to the conduct of litigation;

(c) the fact that circumstances may require the lay client to retain a solicitor or other person authorised or other appropriate intermediary to conduct litigation at short notice and possibly during the case.

(3) Send to the lay client a copy of any advice received by the licensed access client from the barrister to the effect that:

(a) a solicitor or other person authorised to conduct litigation or some other appropriate intermediary (as the case may be) is capable of providing any services to the lay client which the barrister is unable to provide; or

(b) the barrister considers it in the interests of the lay client or the interests of justice that a solicitor or other person authorised to conduct litigation or some other appropriate intermediary (as the case may be) be instructed either together with or in place of the barrister; or

(c) the licensed access client should instruct a solicitor or other person authorised to conduct litigation or other appropriate intermediary (as the case may be).

**9 Liability for the fees:** The licensed access client is liable for a barrister's fee due in respect of work carried out by the barrister under any instructions whether or not the matter concerns a lay client. In this regard:

(1) The relationship between the barrister and the licensed access client is a contractual one.

(2) Any individual giving or purporting to give the instructions on behalf of any partnership firm, company, individual or other person warrants to the barrister that they are authorised by the latter to do so.

(3) If the licensed access client is a partnership or a firm or unincorporated association, the liability of the partners or members and on death that of their estates for the barrister's fees is joint and several.

**Payment Basis: [\*LICENSED ACCESS CLIENT TO TICK AS APPROPRIATE]:** The barrister and the licensed access client agree the basis upon which payment is to be made to the barrister for the work as follows: (which, unless otherwise agreed, shall be one of Basis A (Licensed Access Client Liability), Basis B (Licensed Access Client endeavours to Collect), Basis C (Lay Client Liability) or Basis D (Lay Client Sole Responsibility)).

Basis A     Basis B     Basis C     Basis D     Other

**10 Time for performance of instructions:** Unless otherwise expressly stipulated in writing

(a) a barrister will carry out the instructions as soon as they reasonably can in the ordinary course of their work, but

(b) time will not be of the essence.

**11 Duty of care:** The barrister will exercise reasonable care and skill in carrying out instructions. This is however subject to any immunity from suit which the barrister may enjoy under the general law in respect of any work done in the course of carrying out instructions.

**12 Confidential information:**

The barrister will keep confidential all information provided to them in connection with the matter unless:

(1) they are authorised by the licensed access client or the lay client to disclose it;

(2) the information is in or comes into the public domain without any breach of confidentiality on the part of the barrister; or

(3) they are required or permitted to disclose it by law, or by any regulatory or fiscal authorities, in which case, to the extent that they are permitted to do so, they will endeavour to give the licensed access client and/or the lay client as much advance notice as possible and permitted of any such required disclosure.

The barrister owes the same duty of confidentiality to other lay clients and will therefore not disclose or make use of any information that might be given to them in confidence in relation to any other matter without the consent of their other lay client, even if it is material to the matter in question.

Unless the licensed access client expressly informs the barrister to the contrary in advance in writing, the barrister may allow the Instructions to be reviewed by another barrister or by a pupil (including a vacation pupil or mini-pupil) in chambers, on terms that that other barrister or pupil complies with the duty of confidentiality set out above.

**13 Copies of instructions, documents, written work and publicity:** The barrister shall be entitled on completion of any work to take and retain a copy of all instructions and documents received by them and any written work prepared by them for at least seven years from the date of the last work done by them in respect of the matter.

To the extent that such information is already in the public domain, the barrister may disclose in their marketing and similar materials, and to prospective clients and

publishers of legal directories that they are or have been instructed by the licensed access client and/or by the lay client and the nature of the matter. To the extent any such information is not already in the public domain, the barrister may only refer to it for marketing purposes in a form which sufficiently preserves the lay client's privilege and confidentiality and (where the law so requires) with the lay client's explicit consent.

## **14 Data protection**

14.1 The barrister is a data controller for the purposes of the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018 ("Data Protection Law").

14.2 The barrister is bound by the Data Protection Law amongst other things, to take appropriate technical and organisational measures against unauthorised processing of personal data and against accidental loss or destruction of, or damage to, personal data. The barrister may require similar assurances from the lay client and licensed access client that appropriate technical and organisational measures against unauthorised processing of personal data and against accidental loss or destruction of, or damage to, personal data are in place.

14.3 The barrister is entitled to process (which includes obtaining, consulting, structuring, holding, adapting or alternating, recording, storing, retrieving, erasing, using and disclosing) personal data of the lay client, the licensed access client and others to enable them to provide services, to liaise with the licensed access client in respect of the lay client's case or on the lay client's behalf, to maintain and update client records, to produce management data, to prevent crime, to publicise their activities as set out in clause 13 above, to comply with regulatory requirements and as permitted or required by law. The lay client and the licensed access client each have a right of access and a right of correction in respect of their personal data which the barrister holds about them, to the extent required under the applicable Data Protection Law. The barrister will process personal data in accordance with their Privacy Notice unless otherwise expressly informed to the lay client or licensed access client.

**15 Fees:** Subject to the Code of Conduct, the following provisions apply:

**(1) Fees and/or charging rates:** These shall be as agreed between the barrister and the licensed access client and confirmed in writing before the barrister commences work under the instructions or, in default of such agreement, shall be a reasonable professional rate for the barrister instructed.

**(2) Submission of fee notes:** The barrister shall (a) as soon as reasonably practicable comply with a written request by the licensed access client for a

fee note and (b) in any event submit a fee note not later than 3 months after the work to which the fee note relates has been done.

**(3) Time for payment:** The barrister shall at the time of accepting instructions elect payment according to one of the following timeframes, and the licensed access client shall fulfil payment in accordance therewith:

a) The barrister's fees in respect of instructions are payable and must be paid by the licensed access client 14 days after receipt by the licensed access client of the fee note submitted by the barrister in respect of such fees; or

b) The barrister requires payment in advance in respect of their agreed fees and the relevant fee note issued to the licensed access client must be paid before the barrister commences work.

**(4) Default in payment:** In the event that the barrister's fees are not paid in full in accordance with sub-paragraph (3) above, the fees and/or the balance thereof outstanding from time to time will carry simple interest at the stipulated rate from the date they became due until payment in full.

**16 Complaints:** In the event that the licensed access client or the lay client (if any) has any complaint about the services provided by the barrister under any instructions:

(1) the client should first refer the matter either to the barrister or to their chambers in line with the chambers' complaints procedure. A copy of the barrister's chambers' complaints procedure is attached.

(2) If the client is not happy with the way the barrister or their chambers' handles their complaint, the client may be able to ask the Legal Ombudsman to consider their complaint. The Legal Ombudsman is a free, impartial and independent service set up by the Government to help resolve disputes about legal services. However 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.

(3) Normally a client must bring a complaint to the Legal Ombudsman within six months of receiving a final response to their complaint from the barrister or from their chambers (provided the response specifically notifies the client of their right to complain to the Ombudsman and of the six month time limit).

A complaint to the Legal Ombudsman must also be made not more than six years after the act or omission complained about or not more than three years from the date when the client should reasonably have known that there were grounds for complaint.

(4) 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

**17 Definitions:** In these terms:

(1) 'Instructions' includes a brief and any other instructions or requests for work to be done (and all accompanying documents) given to the barrister by the licensed access client.

(2) 'Licensed access client' means the individual, firm, company or other person instructing or seeking to instruct the barrister, whether on their own behalf or on behalf of some other person under the terms of a licence granted by the Bar Standards Board.

(3) In a case where the licensed access client is instructing or seeking to instruct the barrister not on their or its own behalf but on behalf of some other person, 'lay client' means that other person.

(4) 'Written work' includes any draft pleading or other similar document, any written opinion or advice, and any other similar document.

(5) 'Stipulated rate' means the rate at which interest is payable from time to time on High Court judgment debts.

(6) 'Complaint' includes any complaint whatsoever relating to anything done by the barrister pursuant to any instructions or to the time taken or alleged to have been taken by them in carrying them out and whether the same involves issues of competence, quantum or otherwise.

(7) 'Code of Conduct' means the Code of Conduct of the Bar of England and Wales as promulgated and amended by the Bar Standards Board from time to



time. A copy of the Code of Conduct is contained in the Bar Standards Board Handbook which is available on the Bar Standards Board website.

(8) 'Licensed Access Rules' mean the rules in Part D of the Code of Conduct governing licensed access work and any subsequent version thereof.

(9) 'Licensed Access Recognition Regulations' are regulations published by the Bar Standards Board governing the grant of licenses (including deemed licenses) to licensed access clients.

(10) 'Privacy Notice' means the Privacy Notice on the barrister's Chambers website at **[INSERT WEB ADDRESS]**

(11) 'Basis A' (Licensed Access Client Liability)

1. The barrister shall send to the licensed access client a fee note setting out the barrister's fees in respect of the work or part of the work in accordance with any fees agreed with the licensed access client, promptly on request by the licensed access client or otherwise as may be appropriate given the nature and circumstances of the case.

(12) 'Basis B' (Licensed Access Client Endeavours to Collect)

1. The barrister shall send to the licensed access client a fee note setting out the barrister's fees in respect of the work or part of the work in accordance with any fees agreed with the licensed access client, promptly on request by the licensed access client or otherwise as may be appropriate given the nature and circumstances of the case.

2. The licensed access client will send the barrister's fee note to the lay client as soon as practicable, or otherwise with the next fee note that the licensed access client sends to the lay client for the licensed access client's own fees.

3. The licensed access client shall pay to the barrister any sums properly due on the barrister's fee note within five business days of receipt by the licensed access client from the lay client of payment in respect of the barrister's fees.

4. The licensed access client will endeavour to collect from the lay client the barrister's fees properly due in the same manner as the licensed access client endeavours to collect the licensed access client's own fees. The licensed access client is authorised by the barrister to receive payment of the barrister's fees from the lay client.

5. The licensed access client will advise the barrister promptly if the licensed access client has reason to believe that the lay client will be unable or unwilling to pay the barrister's fees, including (without limitation) if

- (a) the lay client refuses to pay the licensed access client's or barrister's fees,
- (b) the lay client notifies the licensed access client of a possible claim against the licensed access client or barrister or
- (c) the licensed access client becomes aware that the lay client is subject to any insolvency process.

6. If the barrister requests, the licensed access client shall promptly assign any cause of action against the lay client in respect of the barrister's fees to the barrister without any further consideration and shall give the barrister such additional assistance as the barrister reasonably requests to assist the barrister to take action to recover the barrister's fees from the lay client (including, without limitation, the production of documents reasonably requested by the barrister).

7. If the barrister's claim against the lay client to be paid the barrister's fee fails in whole or in part, or would have failed in whole or in part if pursued by the barrister, on account of a defence or cross-claim of the lay client, the licensed access client shall promptly pay any balance of the barrister's fees outstanding to the extent that the defence or cross-claim arises from the negligence or other breach by the licensed access client of the licensed access client's obligations to the lay client and was not caused by any breach of duty by the barrister.

**(13) 'Basis C' (Lay Client Liability)**

1. The licensed access client, on behalf of the lay client, shall agree with the barrister the fees to be paid for the work but shall not be liable for payment of the barrister's fees, which shall be the sole responsibility of the lay client.

2. The barrister shall send to the lay client, with a copy to the licensed access client, a fee note addressed to the lay client setting out the barrister's fees in respect of the work or part of the work as agreed with the licensed access client, promptly on request by the licensed access client or otherwise as may be appropriate given the nature and circumstances of the Case.

3. The lay client shall pay to the barrister any sums properly due on the barrister's fee note within 14 days of receipt by the lay client of the fee note.

4. If Basis C applies, the lay client shall be a party to the agreement incorporating these Terms between the licensed access client and the barrister, and the barrister, the lay client and the licensed access client shall accordingly each be entitled to enforce the agreement incorporating these Terms.

**(14) 'Basis D' (Lay Client Sole Responsibility)**

1. The lay client shall agree with the barrister the fees to be paid to the barrister for the Work. The licensed access client shall not be liable to pay those fees or otherwise concerned with those fees, which shall be a matter solely between the barrister and the lay client.

2. If Basis D applies, the barrister may request payment in advance for the work to be agreed with lay client.

### **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](#).