



The Bar Council

Client care

Purpose:	To draw together all the relevant regulatory requirements on client care and to provide best practice guidance
Scope of application:	All practising barristers
Issued by:	The Regulatory Affairs, Law Reform and Ethics Policy Team
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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.

Introduction

The purpose of this guidance is to assist barristers to meet their regulatory obligations on client care and to provide helpful, best practice advice that goes further than the minimum standards set out in the Bar Standards Board (BSB) Handbook.

As the requirements have a number of different sources, we have sought to draw together all of the relevant regulatory requirements concerning client care so that they are more readily accessible to barristers looking to find all of the information in one place. Some of these requirements have a statutory footing whereas others can be found in different locations within the BSB Handbook and associated guidance.

This guidance note broadly follows the structure of a barrister’s case. Information concerning the minimum requirements is set out first and it is entirely at your discretion whether you decide to follow the suggested best practice approach that follows.

As a starting point, we recommend that you familiarise yourself with Sections C3 and D6 of the BSB Handbook. These set out certain, specific conduct rules and duties on client care, and on transparency of price, service and redress.

PROVISION OF INFORMATION TO PROSPECTIVE CLIENTS

Regulatory requirements

Barristers are permitted to advertise their services on websites and through social media. You should familiarise yourself with the Bar Council guidance on advertising and website profiles that you can find [here](#), as well as the BSB's transparency rules found at section D6 and the associated guidance, available on their website [here](#). Section D6.1 of the Handbook sets out the transparency rules applicable to all self-employed barristers, chambers and BSB entities. Section D6.2 sets out a subset of rules applicable to self-employed barristers undertaking public access work and BSB entities supplying legal services directly to the public in a limited number of areas of law. The relevant legal areas are detailed in the BSB's guidance on the transparency rules. The rules at D6.1 are applicable to all.

You should take care to ensure that any information that you do provide to prospective clients is not misleading, in accordance with rC19.

You should also be clear about the scope of the legal services that you are able to provide and the terms upon which you will be supplying the services. If you are providing legal services in collaboration with others, it should be clear who is legally responsible for the provision of the legal services and how each individual is regulated.

It is worth bearing in mind that you have a duty to comply with requirements of an EU services directive (the Provision of Services Regulations 2009), which is over and above the requirements set out in the BSB Handbook. The Bar Council has produced guidance to assist you meet your obligations under this Directive, which you can access [here](#).

Best practice

It would be worth considering what information you are able to provide to clients prior to instruction. If you use standard terms and conditions, you could publicise these on your website so that the client has more information about the services that you provide. The BSB has also provided guidance on best practice in relation to the transparency rules, available [here](#).

Most barristers also have a personal website or a chambers website profile that sets out their practice area specialism, qualification and skills and experience. This can include information about notable cases. Depending on the nature of your practice, you may wish to consider including endorsements from former clients if it is appropriate. Although the majority of instructions come from professional clients who will be knowledgeable and experienced about the legal services market – and the nature of the services you provide – you may need to take extra steps to set out the information in a clear and transparent way if you provide legal services to the public directly. If that is the case, you may need to provide greater explanation as to the areas

of law that you work in and avoid any technical terminology that will be unclear to someone else who does not work in your field.

As well as the required information about how you are regulated and how the client may seek redress, you may wish to include information on your professional indemnity insurance, the fact that instructions are subject to Legal Professional Privilege (LPP), and the client's right to seek redress from the Legal Ombudsman (LeO) for service complaints and to the BSB for conduct complaints concerning a breach of the BSB Handbook rules.

Again, if you are supplying legal services to inexperienced clients, you may wish to explain the different types of fee structures that you provide and how they work on your website such as the difference between a fixed fee, conditional fee arrangement and a damages-based agreement. Depending on the nature of your practice and if you provide any commoditised legal services, you may wish to provide information about indicative fees and timescales of cases. You may wish to read the [Remuneration guidance](#) available to barristers on the Bar Council Ethics Hub for further information about fees.

Overall, the type of information that you decide to provide on a website will be dependent on the client that instructs and the nature of work that you undertake.

INFORMATION TO PROVIDE UPON ACCEPTING INSTRUCTIONS

Regulatory requirements

Confirming acceptance of instructions and defining terms or basis of acceptance

On first accepting instructions to act in a matter, you must “confirm in writing acceptance of the instructions and the terms and/or basis on which you will be acting, including the basis of charging” (rC22.1).

Manner: If you are instructed via a professional client, this written acceptance must be sent to the professional client; otherwise directly to the client (rC22.2-3).¹ Your clerk can be the one to send it (gC77), and it can be in the form of an email (gC79).

Content: You should make clear the scope of your instructions, including whether they are for a discrete piece of work or for ongoing services. You can do this by referring to the actual instructions (if in writing) or by summarising your understanding of them (gC80). Similarly, you can set out the terms and/or basis upon which you are acting by including a link or reference to those terms. If you agree to work on terms proposed by the client or solicitor, confirm that those are the terms (gC75).

If you practise from a BSB entity, the terms you agree to must include consent from clients to disclose give control of files to the BSB or its agents where the conditions of

¹ By contrast, see the rules on providing clients with information on their right to complain (below).

rS113.5 are met (entity non-compliance, receivership, insolvency, suspected dishonesty, or a BSB finding of necessity to protect client interests).

Timing: This should be provided before you start the work, unless not reasonably practicable, in which event you should provide it as soon as is reasonably practicable (rC24).

Variation: if the scope of instructions later becomes varied by the client (including additional instructions on the same matter), you will not be required to again confirm in writing your acceptance of them or the terms/basis of work. Rather, you are deemed to accept the instructions, on the same terms/basis as before (unless otherwise stated), by doing the work (rC23). However, if the basis of charging for the variation in instructions is not clear, you should explain it to the client (gC76).

As in the advertising and pre-instructions stage, rC19 applies and requires that you not allow clients to be misled as to the nature and scope of your legal services; the terms of work and basis of charging; who will provide them and who is legally responsible for them; your entitlement to supply them and the extent to which you are regulated (and by whom) and covered by insurance.

The practice of devilling is relevant to not misleading clients about *who* will provide the services. You must ensure that the terms on which you have agreed to the instructions permit, or at least do not prevent, your delegating work. The Bar Council's [guidance on devilling](#) states, in essence, that if you intend to farm out a central or critical aspect of the work, you should tell the client this unless you intend to exercise a sufficiently high degree of supervision over it that you can honestly claim ownership of the work.

Informing clients of their Right to Complain

At the time of being instructed, or if not practicable, at the next appropriate opportunity, you must notify clients in writing of:

- their right to make a complaint, including (if applicable) to the Legal Ombudsman
- how and to whom they can complain
- any time limits for doing so, and
- in cases of referral work, the fact that they can complain to your chambers or BSB entity without going through solicitors (rC99.1-2).

This information can be provided to the professional client as part of any letter you send when accepting instructions in a referral case (rC101). If you do not also send a letter of engagement to the lay client, you must send a specific letter including this information (rC102). In public access cases, it is among the information that must be included in writing to public access clients (rC125). Any intermediary through which you are doing public or licensed access work must similarly be informed (rC100).

Chambers and BSB entities' websites and literature must display information about their complaints procedure (rC103).

The Bar Council's example Client Care Letter sets out this information as follows:

Complaints

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.

You do not need to go through your solicitor in order to make a complaint to my Chambers.

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.

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). 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 you should reasonably have known that there were grounds for complaint.

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' website (www.legalombudsman.org.uk) or by contacting:

Legal Ombudsman

PO Box 6806

Wolverhampton

WV1 9WJ

Email: enquiries@legalombudsman.org.uk

Phone: 0300 555 0333

Requirements specific to Public Access

Rule rC125 sets out the information that must be given to clients (and any intermediaries) in writing after you accept instructions on a public access basis. This will generally take the form of a client care letter. The BSB has a model letter which, per rC126, will usually suffice to comply with rC125. The Bar Council also has model letters as part of its guidance on [Client Care Letters](#).

Where providing services directly to a consumer, i.e. a public access client who is an individual instructing you in their personal capacity, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 impose additional information requirements. In particular, where your contract of representation is concluded outside of chambers (for instance over the phone or via email), the client will have cancellation rights and must be informed of them. The Bar Standards Board model client care letter incorporates this notice. For more on the 2013 Regulations, see our associated guidance [here](#).

Best practice

It is desirable to be as thorough in providing information to the client as you can, particularly given the “information asymmetry” identified by the CMA between barristers and the people who use their services. Clarity at the outset can help to manage a client’s expectations and prevent confusion that turns into disagreements down the line.

In addition to the mandatory information described above, it is good practice to be clear with the client about the following:

What you are going to do: spell out the services you are going to provide and give the client an idea of the kinds of factors that could affect timeframes. In public access cases it is a good idea to set “ground rules”,² i.e. be clear about how much correspondence and face time they can realistically expect from you.

What you cannot do: if you are doing public access work and are not authorised to conduct litigation, you should make this clear and spell out what the limitations of your service are. Public access clients have reported being surprised by the amount of work they have to do themselves.³ While you will not necessarily be able to predict what actions the client may be required to take on their own behalf as a case progresses, it may be worth drawing particular attention to the indicative list in the BSB Model Client Care Letter of examples of work you can/cannot do.

Your ethical duties: it may be worth explaining to the client that you owe your duties to them and not the solicitor; that although you are contracted by the solicitors, your duty is to act in the lay client’s best interests irrespective of the consequences to the

² BSB/Pye Tait, “Research into the Public Access Scheme: Final Report” (2016) at 40.

³ BSB, Public and Licensed Access Review Report (March 2017) at 39.

solicitors. Equally, you may wish to explain to the client that your duties to them may in certain circumstances give way to your duty to the court, particularly in terms of not misleading the court.

Fee transparency: where fees have been charged in advance (e.g. in public access cases), client understanding will be assisted by providing an itemised breakdown of the services that make up the fee.⁴

How you communicate is as important as what you to tell the client. Consider having at least one face to face meeting with the client in a public access case. At all times make sure you communicate using plain, accessible English. Special considerations apply in the case of vulnerable clients. The BSB has produced a helpful guide to working with vulnerable immigration clients. The factsheet within it on client care is of particular relevance, and can be found [here](#). See also the Bar Council guidance on [Client Incapacity](#).

KEEPING YOUR CLIENT INFORMED WHILE DELIVERING YOUR SERVICES

Regulatory requirements

Core duty CD7 requires you to provide a competent standard of work and service to each client.

As far as service is specifically concerned, the outcomes towards which this duty is directed include oC10 (“Clients receive a competent standard of work and service”), oC13 (“Clients know what to expect and understand the advice they are given”) and oC15 (“Clients have confidence in those who are instructed to act on their behalf”).

The conduct Rules themselves impose ongoing duties on barristers to continually assess whether certain conditions are met, and if so, to inform the client:

- 1) If a change in representation is in the client’s best interests (rC17): this could include replacing the instructing solicitor, instructing an additional advocate, or stepping down yourself.
- 2) If it becomes apparent to you that you will not be able to carry out the instructions within the time requested, or within a reasonable time after receipt of the instructions; or there is an appreciable risk that you may not be able to undertake the instructions (rC18) – you must inform the client to that effect, as far as reasonably possible, in sufficient time to enable appropriate steps to be taken to protect the client’s interests.

⁴ *Ibid* at 32.

- 3) (In public access work) if the circumstances of the case are such that it would be in the best interests of the public access client (or the interests of justice) for them to instruct a solicitor or other professional client (rC123).

Best practice

Paragraph 1.9 of the BSB's Professional Statement for Barristers sets out a definition of the communication skills a barrister is expected to demonstrate:

Barristers will [...] exercise good communication skills, through any appropriate medium and with any audience as required in their work. They will be able to choose the appropriate medium of communication, taking into account the message and the audience. They will be aware of and responsive to what others are communicating to them, whether in writing, verbally or non-verbally. They will be able to write with clarity and precision. They will be articulate and able to speak with fluency. They will be able to adapt their language and communication to suit their audience, which may be clients, colleagues and others, from any background.

George Bernard Shaw said: "the single biggest problem in communication is the illusion that it has taken place". Perhaps the reason for this is explained by the oft-quoted notion that communication is "not what you say, it's what they hear". This is a point worth bearing in mind when considering Outcome oC13, that clients know what to expect and understand the advice they are given.

While the quality of a barrister's *work* inheres in his or her technical ability, good service means communicating that work in accessible terms. In referral work, counsel's advice may primarily be drafted for the instructing solicitor's consideration; however, where possible it should ideally be comprehensible to the lay client. This is all the more important for public access work.

At the risk of stating the obvious, advice should be given in a contextualised way, with an emphasis on practical solutions. Where necessary, barristers should actively assess whether their advice has been understood by asking questions of a client who seems unclear. Barristers should also ensure that no client feels discouraged from seeking reasonable clarification.

Although you are counsel rather than a counsellor, acknowledging the client's legally irrelevant concerns (such as their perception of an injustice, or the emotional toll that a stressful situation is taking) may help build trust and cooperation. Empathy, to the extent that it does not detract from your independence, can be an important aspect of providing a good service.⁵

⁵ "5 Communication Skills Lawyers Need and Why", USC Annenberg School for Communication: <https://communicationmgmt.usc.edu/blog/5-communication-skills-lawyers-need-and-why/>

AFTER YOUR CASE HAS FINISHED

Regulatory requirements

The only ongoing duty to clients that persists after you cease to act for a client is that of client confidentiality. This is set out at rC15.5 of the BSB Handbook:

You must protect the confidentiality of each client's affairs, except for such disclosures as are required or permitted by law or to which your client gives informed consent.

You may wish to have regard to the Bar Standards Board guidance on confidentiality that you can access [here](#).

For further information about how to ensure that confidential information is properly stored, you can access the Bar Council guidance on [information security](#).

There is no general prohibition on acting against a client that you have previously acted for. However, if you are being instructed on the same matter by another party, you may need to consider whether there is a conflict of interest and whether you need to obtain informed consent from all former and existing clients in accordance with rC21.3. Further you may be prevented from acting if there is a risk that confidential information could be transferred between the two cases, per rC21.4.

rC125 of the Public Access Rules provides that you should retain for seven years copies of instructions, advices, documents included with instructions and notes of all telephones and conferences. You can keep these yourself or have the lay client keep these on your behalf. We often receive questions from barristers about the length of time that they should retain documentation in non-public access cases and consider that this rule is a good indicator. This needs to be balanced against your obligations under the GDPR not to retain information longer than necessary. The Bar Council has produced a guide on [data retention](#) to assist you in that regard.

Best practice

Client feedback can provide an opportunity for barristers not only to improve their standard of service, but also provides an insight into how and why instructions came to you. The Bar Standards Board has produced guidance on engaging with feedback, which you can access [here](#).

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

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