



Licensed Access Guidance - Handbook for Chambers

Introduction

1.1 This handbook comprises the following sections:

- (1) A general introduction which sets out what licensed access is and the nature of the work covered by the scheme.
- (2) A check list for barristers considering whether to accept instructions under the licensed access scheme.
- (3) Guidance for individual barristers and chambers who are considering whether to accept instructions under the licensed access scheme. The notes cover matters such as the qualifications for acceptance of instructions and the obligations arising upon receipt of instructions and thereafter. Where appropriate, the notes contain references to the relevant rules of the Licensed Access Rules.

1.2 There are also attached to this handbook a number of appendices, as follows:

- (1) The information pack given to existing and prospective licensed access clients comprising the following:
 - (a) An introduction;
 - (b) Guidance for those seeking recognition as licensed access clients.
 - (c) Guidance notes for licensed access clients.
- (2) An application form for those seeking recognition as licensed access clients.
- (3) The Licensed Access Terms of Work.
- (4) The Licensed Access Rules ("the LAR").
- (5) The Licensed Access Recognition Regulations ("the LARR").

1.3 To apply for a licence, to amend an existing licence, or to receive further details of the scheme, please visit the [Bar Standards Board's website](#), or contact Joanne Dixon, Manager, Qualification Regulations: 020 7611 1444.

Members of the Bar or clerks seeking guidance on Licensed Access issues should contact the Ethical Enquiries line on 020 7611 1307, or by [email](#).

Introduction to Licensed Access

What is Licensed Access?

2.1 Licensed access seeks to maximise client access to the legal profession whilst at the same time ensuring that the Bar retains its identity as a referral profession. The legal profession is responsible to the public for the provision of competitive and cost effective legal services of the highest professional standards. In meeting these goals the legal profession must ensure that the interests of the client are prioritised. licensed access has been established to provide those organisations and individuals who possess the necessary skills and knowledge to do so, to have the opportunity to refer to the expertise of a Barrister without the intervention of a solicitor.

2.2 Licensed access recognises that there are significant areas of work in which the traditional two layered legal system in which the Bar insists that only a solicitor can refer work to it may unnecessarily increase the costs which the client is required to bear. Licensed access seeks to highlight the fields of practice in which barristers are positioned to provide specialised advisory and advocacy services on a competitive and cost effective basis without the intervention of a solicitor. It demonstrates the areas of work in which the skills and training of a barrister are compatible with direct access from organisations and individuals whose own training, skills and experience equip them to instruct a barrister directly.

2.3 Building upon the experience of Direct Professional Access (DPA), licensed access will allow direct access to the services of a barrister from a far wider range of organisations and individuals than previously permitted. It will mean that under certain conditions, suitable organisations and individuals (from the business community to the voluntary sector) will have direct access to a Barrister.

2.4 The Bar Council will carefully regulate licensed access to ensure that the organisation or individual is properly equipped to instruct the Bar. Through a Licensing Scheme known as Licensed Access, The Bar Council will identify the particular type and scope of work in respect of which organisations and individuals which it licenses will in future have the opportunity to instruct a Barrister directly. Licensed access will give those organisations the choice of consulting either a solicitor or a barrister in cases where it is unnecessary and not cost effective to instruct both a solicitor and a barrister.

2.5 In short, licensed access is about ensuring that the Bar is a premier provider of competitive and cost effective legal services and that in offering those services to the public it does not impose unnecessary restrictions.

Licensed Access Work

2.6 The Courts and Legal Services Act (“CLSA”) recognises a distinction between advocacy services and litigation services. The Bar believes that this is an important distinction in the provision of legal services and one which should be maintained in the interests of the public. The Bar is not equipped to and does not have the facilities to conduct litigation or offer litigation services. The principle of a primarily referral based profession remains central to the profession and practice of a Barrister. Licensed access does not permit barristers to conduct litigation within the definition set out in the CLSA or to perform “excepted work” as defined in the Code of Conduct.

2.7 The licensed access licensing scheme ensures that the referrer has the skills necessary and the facilities available to instruct the Bar direct. Licensed access will not lead to referrals ‘off the street’.

Implementation

2.8 Pilot schemes began in the summer of 1999. Client access to the scheme is governed by the LARR a copy of which is at Appendix 5. The role of counsel under the scheme is governed by the Licensed Access Rules (‘LAR’) which is at Appendix 4. Any barrister wishing to accept instructions under licensed access must be familiar with the terms of both the Regulations and the Rules.

Licensed Access Checklist

The Client

- Is the client an approved organisation permitted to instruct under license access
- Does the licensed access client have sufficient authority to instruct you on the type of work that it wishes to - ie does the work fall within the authority shown on the licensed access licence forwarded to you at the time of instruction?
- Is the particular type of work actually suitable for instruction under licensed access or will it require the intervention of an intermediary to provide litigation services?

Counsel

- Are you familiar with the terms of the Licensed Access Recognition Regulations and the Licensed Access Rules?
- Are you satisfied that you and your chambers are sufficiently equipped to facilitate the additional administrative requirements necessary to accept licensed access instructions?

Guidance for Barristers and Chambers

Who can accept instructions?

3.1 The LAR covers every barrister in independent practice and governs the terms under which they are permitted to accept instructions.

3.2 As set out below, licensed access imposes requirements on Counsel to assess the suitability of instructions under the scheme, obligations to advise clients as to the nature of scheme in each particular case and a duty in respect of the organisation of paperwork etc.

3.3 To be eligible to accept licensed access instructions a barrister must have completed the first six months of pupillage and be either be a tenant in chambers or a working pupil/squatter.

The Obligation Upon Counsel Upon Receipt of Instructions

3.5 Accompanying every instruction the client is obliged to send the barrister a copy of its licensed access licence and identify exactly who is providing instructions (See LAR Rule 4). A barrister can only accept instructions if satisfied that the type of work offered is appropriate for the scheme. Whilst the licensing scheme should result in a clear definition of what work should be forwarded to counsel, it remains the responsibility of a barrister in each individual case to satisfy her/himself that s/he has sufficient facilities to support the case without the need of a solicitor or other similar intermediary (see LAR Rule 5). Similarly, if at any time during the course of a case, a barrister feels that the client's best interests and the interests of justice are best served by the introduction of a solicitor, or other such intermediary, then s/he must advise in writing the client of the need to instruct them forthwith (see LAR Rule 8(a)). If a solicitor (or other duly authorised person) is not so instructed then the barrister is under an obligation to return instructions and cease to act (see LAR Rule 8(b)).

3.6 Upon receipt of instructions a barrister must write to the client stating that the instructions have been accepted (as the case may be) on the standard terms previously agreed in writing with that licensed access client or on the Licensed Access Terms of Work or if s/he has accepted instructions otherwise than on such standard terms a copy of the agreement in writing with the licensed access client setting out the terms upon which s/he has agreed to do the work and the basis upon which s/he is to be paid. If requested so to do a barrister should send a copy of the Licensed Access Terms of Work to the licensed access client. Unless s/he has accepted instructions on the terms of the Licensed Access Terms of Work or on terms which incorporate the following particulars s/he must advise the licensed access client in writing of the effect of paragraph 210 of the Code of Conduct in the circumstances of the instructions, of the fact that the barrister cannot be expected to perform expected work and that circumstances may arise in which it will be necessary or appropriate, often at short notice and possibly during the case, to retain the services of a solicitor or authorised litigator (see LAR Rule 7).

Administrative Obligations

3.7 A barrister who is instructed by a licensed access client must keep a case record (either on card or computer). Rule 10 sets out what must be included in the record (such as details as to the date of receipt of and acceptance of instructions, time limits, dates of advices and conferences, the fee (when agreed) etc).

3.8 Instructions (including a list of enclosures), advices, drafts of documents, notes of all conferences (including on the telephone) and all advice given must either be retained by the Barrister or the Barrister must take reasonable steps to ensure that the licensed access client will retain these documents for 6 years after the date of the last item of work done. (see LAR Rule 11).

3.9 The barrister is under a duty to ensure that the licence covers the client and the scope and type of work the subject matter of the instructions to the Barrister. A copy of the licensed access Licence must be sent to the barrister with the instructions (see LAR Rule 4). If a barrister believes that a licensed access client has in some significant respect failed to comply with the terms of its licence or with the Terms of Work, then the barrister must report the fact to the Access to the Bar Committee (see LAR Rule 9).

Appendices

1. The information pack given to existing and prospective licensed access clients comprising:

An introduction;

[Guidance for those seeking recognition as licensed access clients.](#)

[Guidance notes for licensed access clients.](#)

2. [An application form for those seeking recognition as licensed access clients.](#)

3. [The Licensed Access Terms of Work.](#)

4. [The Licensed Access Rules \("the LAR"\).](#)

5. [The Licensed Access Recognition Regulations \("the LARR"\).](#)