



Financial Affairs, Accounting and Tax A-Z

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The Young Bar A-Z Toolkit has been written by members of the Bar Council's Young Barristers' Committee, with input from solicitors, fellow barristers, pupil supervisors and clerks, and from Bar Council staff. It is designed for barristers, including pupils, in the early years of practice.

If there are things you would like us to cover in future updates, or if you would like to comment on the material that is here, [please let us know](#).

[The BSB Handbook](#)

The latest version of the BSB Handbook can be found on the Bar Standards Board website [here](#).

[ABSS and Entities: Dual Practice – Employment as a Consultant](#)

There is now an increasing variety of ways in which barristers can offer their services. These will have their own accounting and tax treatment. It is important to double check with an accountant that you are dealing with your fees in an appropriate way.

Do be aware that you may be considered to be an “employed barrister” for the purpose of BSB regulation, but your income may fall to be taxed as arising from “self-employment: the definition of ‘employed barrister’ includes a practising barrister who is employed “under a written contract for services which is for an indeterminate period”

Fees from employment as a consultant will typically be treated in the same way as any of the other fees that you receive. The difference is that they will most likely be paid to you directly rather than through Chambers. It is up to you to ensure that you issue the appropriate invoices, receipts and admittance advices to your client.

[Accepting instructions from defaulting solicitors](#)

Barristers are not required to refuse instructions from solicitors on the list but may choose whether or not to accept instructions from them. The BSB Handbook specifically provides that the Cab Rank Rule (rC29) does not apply if the professional client “represents, in your reasonable opinion, an unacceptable credit risk” (rC30.7).

A barrister is always entitled to ask for payment to be made in advance of accepting instructions. If you have done so, and the fees have not been paid, you are under no obligation to take the work (rC30.9.b).

For information to assist barristers and Chambers to ascertain if a firm may be deemed an ‘unacceptable credit risk’, see [here](#).

Accountancy Services

It is worth considering getting an accountant.

- First, you are a business and there is a fair amount of work associated with this, in particular filling in tax returns and VAT returns. This may be too much to handle in your first couple of years when building a practice; having someone to keep on top of things for you will take away most of the work and a lot of the stress.
- Second, the stress of sorting out this sort of thing will be reduced if there is someone who knows and understands the requirements and can give you simple advice on what you can and can't claim. Being able to trust an expert rather than relying on your own research in the limited time available will reduce the likelihood of you missing deadlines (which can incur a fine) or getting something very wrong (which could result in criminal penalties in extreme cases).
- Third, if the accountant gets it wrong you will have some redress.

You may be put off by the cost of an accountant, but it is always worth investigating: many accountants offer free accounting services for your pupillage year (or your first year of practice or year with them). Thereafter, some offer competitive fixed fees based on your earnings. Having an accountant may also pay for itself in terms of time saved (which you could be using on more remunerative work) and in identifying what items can be claimed against tax.

We would always recommend that when you choose an accountant, you look for one who specialises in or is at least experienced in working for barristers. They will have a much better idea of both the demands and eccentricities of your practice and what kind of paperwork they should be expecting from your chambers (they may be able to guide you in this).

If you are unsure who to choose, ask around chambers for a recommendation or see the Bar Council's recommended partners.

Conditional Fee Agreements

In some cases, you will be asked to work on a Conditional Fee Agreement (CFA) or Damages Based Agreement (DBA). The Bar Council publishes a guidance document explaining the range of different agreements possible. [See here](#).

While many chambers do not expect pupils to undertake work on a CFA basis, you may be asked to accept particularly Personal Injury work on a CFA basis from early on in tenancy. Although you are entitled to seek an uplift under a CFA out of the client's damages, anecdotally we have found that most solicitors expect counsel to accept work on a 0% uplift CFA or not at all. Remember that CFAs are an exception to the cab rank rule and you are entitled to refuse a case on a CFA basis for any reason (see BSB Handbook rC30.9.c).

Under a CFA, work will be billed immediately but you do not get paid unless and until the solicitors win or settle the case, so you may wait several years before either receiving or being asked to accept a reduction in fees. It is important to make sure that your clerks (or you) get regular (every six months or so) updates on the progress of the case so that you know when the case is due to come to trial or settle.

Deferred Fees

In addition to the above, you may be asked to agree to take work on a 'deferred fee' basis. This work is paid on a private basis (so you get the fees whether the case wins or loses), but you agree not to be paid until either the conclusion of the case or when the solicitor receives costs. This will mean that you may wait several months or even years for the fees (although in reality, you may not wait any longer for fees on a deferred basis than you would have if the solicitor was paying on the issue of fee notes). As with CFAs, it is important to make sure that your clerk keeps in touch with the solicitor to track the progress of the case so that your fees clerk knows when the case has concluded and when to start chasing for your fees.

Family Legal Aid: A Young Practitioner's Guide

As someone just starting on their feet as a family barrister, you will quickly have to come to terms with one particular issue: legal aid.

Family barristers who practice solely in children work will be predominantly working for local authorities and for legally aided clients, be it children or parents. The one key thing to do in order to ensure that you are paid for legally aided work can be summed up in one word: "Billing".

Legal aid work is billed using FAS forms (FAS = Family Advocacy Scheme). FAS forms need to be completed by you and signed by the judge or legal adviser after each hearing is completed – you need to ensure that the times are initialled as well as any "ticks". There are a number of boxes on the forms that can be ticked depending on whether you qualify for those uplifts in each case (for example ticks for the size of the court bundle in pages). There is guidance on the back of the FAS forms as to the tick box criteria and this merits careful reading.

In order to successfully bill a hearing, you will need to supply your clerks with the following:

1. Fully completed, sealed and signed FAS form (do not forget to get the court usher/clerk to seal it using the family court stamp)
2. A copy of the order listing the hearing with attendance times set out in the directions
3. If it is a final hearing you will need a sealed copy of the final order (if the hearing is effective)
4. A copy of your instructions, signed and endorsed
5. A copy of the legal aid certificate (obtained from your instructing solicitors)

You may find that your billing clerks will obtain documents such as the legal aid certificate, but this always merits checking.

If you follow the process set out above, you should be paid reasonably swiftly.

Final Payment

At the end of the case if no order for costs has been granted against the other side the legally aided party is entitled to have costs paid by the LAA. The final fee note at Legal Aid rates should be sent to the solicitor to be included with their bill.

The LAA assesses bills under £2,500 (exc. VAT). Bills in excess of £2,500 are assessed by the Senior Courts Costs Office (SCCO).

Assessment by the SCCO can take 3-6+ months, and counsel's fees can be assessed down. Counsel can appeal the amounts allowed regardless of whether the solicitor is appealing their profit costs and vice versa. No amount will be paid until all the costs are agreed.

If no appeal is lodged, or when fees are agreed, a certificate will be sent to the court for sealing (6+ weeks) and then the bill submitted to the LAA for payment (6 – 12+ weeks).

If counsel has been overpaid the LAA will recoup any monies owed from counsel; the LAA will not make any payments until there is a credit balance on the LAA system.

Should a costs order be awarded against the other side, the solicitor will submit a bill at inter partes rates to the other side. It is the solicitor's responsibility to submit a Claim 2 informing there will be no claim against the LAA fund and that the certificate should be discharged. The LAA will then recoup any payments on account made to counsel and the solicitor.

Protecting your Financial Future

Finding time in today's busy world is a constant challenge. The demands of balancing work, family and leisure often do not allow the opportunity to plan or review personal finances.

There are three key areas that will help protect you and your family:

- Income replacement cover
- Critical illness cover
- Life assurance

Income replacement cover

Income replacement is a means of providing a tax- free income where, due to ill health (caused through accident or sickness), you are prevented from working for a number of months or even years.

Such plans generally provide cover between 50%-60% of your total gross earnings, less trading expenses, and will cover you being unable to carry on your **own** occupation. (This is preferable to policies that may not pay out if you can carry on **any** occupation.) A proportionate level of benefit may also be payable if you return to work part-time, assuming the reduction in earnings is because of your illness or injury.

After an agreed 'deferred period' of usually between four and 52 weeks when no benefit is payable – the length of which will determine the cost of the policy – income replacement cover will pay out an amount each month until you are able to return to work, the policy cessation date or you die.

All benefits payable at the point of claim are dependent on a range of factors, such as any continuing income and potential State benefits.

Critical illness cover

If you are diagnosed with a critical illness it could have a significant effect on your finances. Critical illness cover is an insurance policy that pays out a tax- free lump sum on the diagnosis of an illness as specified in the policy conditions.

These policies usually cover up to 30 different conditions, each of which may have a different impact on the claimant. There are seven core medical conditions which must conform to minimum definitive guidelines set out by the Association of British Insurers (ABI). These are cancer, coronary by-pass surgery, heart attack, kidney failure, major organ transplant and Multiple Sclerosis.

A financial need will be directly related to the condition suffered so an exact requirement cannot be calculated until after the event. However, a reasonable level of cover would consist of protection for the mortgage or loan; paying for long-term nursing care or medical expenses; or paying for alterations to your home or car.

Life assurance

A life assurance policy is a simple, affordable and effective way of protecting your family's future by providing the peace of mind of knowing that if you die, your family will receive a tax-free lump sum or income. The most typical forms of life assurance policy available are set out below:

- A **Mortgage Protection Policy** is designed to repay a capital and interest mortgage in the event of death.
- A **Level Term Assurance Policy** is designed to repay an interest-only mortgage or as protection for the existing family lifestyle.
- **Family Income Benefit** is designed to provide cover for a temporary need such as childcare or education costs. The policy would usually pay out a tax-free annual income over the term of the plan.
- A **Whole Life Assurance Plan** is designed to pay out a lump sum in the event of death and is not restricted by a designated policy term. This is also the only form of life assurance that has an investment element built in to the contract.

Premium rates for term assurance policies can be offered on a guaranteed or reviewed-rate basis with the option to inflation link the policy annually also being available. For whole life policies, premiums are usually guaranteed for ten years and would then be subject to review depending on the investment performance of the fund/s selected.

The Barristers Benevolent Association

If you are struggling with financial pressures you might consider contacting the Barristers Benevolent Association (BBA). It is also possible to donate to the BBA.

If the donation is gift-aided, a self-employed barrister who pays higher or additional rate tax will be able to claim the difference between the rate they pay and the basic rate of tax on the donation. <https://www.gov.uk/donating-to-charity/overview>.

This page was drafted in partnership with [MPL Wealth Management](#). For more information about the information above, please contact Giles Garlick, Chartered Financial Planner on 020 7831 4711 or gg@mplltd.co.uk

State Benefits and Tax Credits for the Self Employed

If you really hit hard times you might be able to claim some state help towards housing and living costs. The rules are complicated. A good place to start is the [Turn2Us](#) website, which enables you relatively quickly to assess your benefit entitlement.

If that doesn't answer your questions, or you wish to speak to someone in more detail, contact Citizens Advice. There is a wealth of information, including specific guidance on benefits, on the [Citizens Advice](#) website.

Sole Practitioners

You cannot set up completely on your own if you are a barrister of less than three years' standing. The BSB Handbook rS20 requires that your principal place of practice must be a chambers, or chambers annex, which is also the principal place of practice of a 'qualified person' who is able to provide you with guidance, or an office where there is someone of the requisite experience. For details see the BSB Handbook, rules S20, 21 and related guidance.

If you later become a sole practitioner you will be solely responsible for the running of a chambers and all the regulatory requirements which that entails, including ensuring that your practice is efficiently and properly administered (see BSB Handbook rC87.1 and rC89). Note that a sole practitioner is a chambers within the BSB definition.

Serious consideration should be given to the decision to become a sole practitioner. This may be isolating and you may lack support and there may be difficulties with work which has to be returned.

NB: it is not a regulatory requirement for you to have a clerk. However, you will need to decide whether you can run your practice in accordance with the BSB Handbook without administrative support.

It is essential that you can do the following (at least):

- Log briefs on arrival.
- Have facilities to ensure that your work is completed in good time and that you do not take on more work than you can manage.
- Have suitable diary facilities to avoid clashes.

- Keep adequate records of your work, see BSB Handbook rC87.2 and guidance at gC132.
- Send out fee notes in good time and keep adequate records of fees: see BSB Handbook rC88.
- Follow data protection rules, see BSB Handbook gC134.
- Comply with the BSB Handbook e.g. providing clients with terms of business (see rC22 and rC23) and complaints procedure (see section 5A), conflicts procedure and appropriate confidentiality procedures (rC89.5 and gC134) and having a Equality and Diversity policy, appropriate risk management procedures (rC89.8) and changes in regulatory matters from time to time and liaising with the BSB (rC89.2).

On the plus side, you are permitted to negotiate your own fees, to practise from your own home (although the BSB does have a right to inspect the place where you practise: see BSB Handbook, you do not need to have a name plate on the door and you can hold conferences wherever is convenient.

Professional Insurance: The BMIF and Regulatory Requirements

- There is a regulatory requirement for you to have adequate insurance (taking into account the nature of your practice): see rule C76(1) of the BSB Handbook. There is guidance at gC114 but it does not really elucidate what is meant by “adequate”.
- You must obtain insurance from the BMIF in order to practice (rule C77 of the BSB Handbook) so you should be in touch with the BMIF in order to obtain insurance immediately on starting practice.
- Early in the calendar year each year the BMIF will send round returns to complete. It is very important that these are accurate as inaccuracy could cause your insurance to be invalidated. The returns require you to categorise your income from the previous year. If you are in serious doubt as to the correct category for a case the BMIF can advise. The insurance runs from 1 April to 31 March every year. You are required to pay the BMIF promptly and to provide the BMIF with the information it requires: see rule C78 of the BSB Handbook.
- The amount you pay to the BMIF is worked out as a combination of your risk profile from the work you do and the amount you earned in the previous year.

- You must have minimum cover of £500,000. The maximum you can obtain from BMIF is £2,500,000. The BMIF will tell you if the amount which you are required to pay entitles you to a level of insurance higher than £500,000 up to £2,500,000.
- Insurance is available in excess of £2,500,000 from private insurance companies and a quote can be requested when you fill out your BMIF return. The Bar Council has service partners who may offer advantageous terms. It is surprisingly inexpensive, particularly when you consider that it is tax deductible.
- It may seem improbable that you will be involved in such high value cases in your early years of practice but do be careful to keep an eye on your potential liability in any given case. You can easily find yourself involved as a junior in cases with surprisingly large financial implications.
- Top up insurance can also cover you for matters not covered by BMIF, e.g. fines in respect of data protection failures. (Data protection fines can be substantial: we have heard of six figure sums being ordered in cases where DP rules have been breached, and fines can be imposed, for example, for having medical records stolen from a locked house or the boot of a car).
- You may wish to increase your insurance in order to cover yourself for a particular case. This can be done mid-year. Your chambers may have negotiated a collective discount for private insurance.

If you have been notified of a claim, even informally, notify the BMIF straight away. DO NOT bury your head in the sand. This could lead to a position where the insurance is invalidated. Being notified of a claim does not mean that you have been negligent and even the best barristers make mistakes. The claims handlers are sympathetic. It is likely that senior members of chambers will be willing to offer you support and some will even share their mistakes with you too.

Outstanding fees: Fee chasing and Collection

If your fees are seriously delayed your first port of call is your clerks or fee clerk. They will usually manage the chasing of outstanding fees for you.

Where work is undertaken on contractual terms and solicitors refuse or fail to pay, the only remedy is to initiate court proceedings for recovery of the debt. The Bar Council's Ethics & Practice Hub has the Bar Council's Standard Contractual terms [here](#).

If you have a fee outstanding, you can make a complaint to the Bar Council if:

- You have obtained judgment for the fees against the solicitor, or
- The solicitor has not paid a joint tribunal (see below) or arbitration award in respect of your fees.

In such cases the Bar Council will attempt to recover the fees outstanding on your behalf, and if it fails will register the solicitor on its **List of Defaulting Solicitors and other Authorised Persons**. See [here](#).

Overdrafts, Practice Loans, Mortgages and Credit

- It sounds old fashioned, but it is helpful to have a good relationship with your bank manager. It is important to make sure that your bank understands that you are a self-employed barrister.
- Some banks will require you to have a business account and will charge fees in relation to it. Banks may say that they require you to have a business account for tax reasons – this is not the case. Make sure you understand why the bank is suggesting it as part of their doing business with you. If in doubt, shop around!
- In order to obtain loans and/or mortgages or other credit you will need accounts showing your income. It may also be necessary to provide evidence of your aged debt. Typically, 3 years of accounts are needed to show a steady income for a mortgage. Often a mortgage provider will ask for your SA302s (your self-assessment tax calculations), particularly if you do your accounts yourself. If you have done your assessment by post or can't access your online account, you will need to get HMRC to print these for you. Ensure that you ask HMRC to fax them to you (they will not yet send by email): they may take up to 3 weeks to arrive by post.
- Mortgage brokers may be best placed to help you, as they will know which institutions are likely to be prepared and happy to deal with self-employed individuals.
- Aside from the usual commercial loans, some companies offer loans secured on your aged debt.
- Barristers who pay the BRF are entitled to a range of discounts on services from the Bar Council's service partners. This includes aged debt funders.
- Payment: How long do you have to wait?

Prior to 2013 the Bar operated under non-contractual default Terms of Work. Barristers did not generally opt to use contractual terms and in those circumstances, it was not possible for barristers to sue for their fees.

Barristers are now advised to establish clear contractual arrangements for their work. Guidance is provided on the Bar Council's Ethics & Practice Hub [here](#).

Whether or not you will be entitled to sue for your fees if payment is delayed and how long you will have to wait before you can do so will vary depending on who is paying you and the contractual arrangements you have arrived at.

Payment: Privately paid work and work done for the GLD

- In the case of **work done for large insurance companies and for the government via the Government Legal Department civil panel counsel** fees are, usually, paid fairly promptly.
- If your work is under the **Bar Contractual Terms** then clauses 12.4-12.6 provide that the invoice must be paid within 30 days of delivery, without any set off. Failure to pay within that time will entitle the barrister to charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and/or sue for payment. In addition, you are entitled to refuse to do any further work on the case unless payment for further work is made in advance (subject to your obligations to the Court and other BSB Handbook provisions).
- If you are doing the work on the **COMBAR and City of London Law Society terms** then clause 9 provides for payment and billing arrangements – see <http://www.combar.com/about-us/combar-clls-contract-terms/> and associated links. There are four different bases for payment: Basis A – solicitor should pay within 30 days of receipt of the invoice irrespective of whether the solicitor has been paid by the lay client; Basis B – solicitor is liable to pay the fees, but only when the solicitor has received the fees from the lay client; Bases C and D, the lay client is expected to pay the barrister and the solicitor is not responsible. Anecdotally, those who operate the COMBAR terms mostly use Basis B. Bases C and D differ slightly in that the solicitor is involved in agreeing counsel's fee with the lay client in the former, but not the latter, but both suffer from the weakness that the solicitor plays no role in the billing of fees and does not chase payment on counsel's behalf.

In reality even with the contractual provisions you may have to wait several months until you are paid. You should allow for a cash flow that is approximately 2-3 months 'out' from when you are billing.

Payment: Publicly funded work

The position in relation to publicly funded payments is significantly different.

In Legal Aid cases, because the money is coming from government, most barristers do not use contractual terms. However, the Bar Council has produced a clause that barristers can use in civil Legal Aid cases to give them contractual protection. See [here](#).

Legal Aid fees are paid by the Legal Aid Agency. The fee schemes and payment arrangements are complex and vary between the different fee schemes. The various regulations are in different places on the LAA website, but your clerks will be the first port of call and guidance.

In criminal cases in the Crown Court the average time for payment is around 3-5 weeks from the submission of a claim at the end of a case. The Legal Aid Agency will send an 'assessed return' and then payment. However, if there is a lack of records (such as a missing indictment or page count) this can delay payment. For Magistrates' Court work in crime, regrettably, payment for counsel depends on when the solicitor bills the case, when they receive payment and when they pay your fees. If you are having consistent problems with a firm of solicitors not paying you for Magistrates' Court cases talk to your fees clerks or contact the Bar Council's Ethical Enquiries Service email Ethics@BarCouncil.org.uk or telephone 0207 611 1307).

Edna Hackman, Fees Clerk at Landmark Chambers explains the regime for payments in publicly funded civil cases:

Excluding family work, the three main types of Civil Legal Aid are Full Public Funding (also known as Certificated Work), Controlled Legal Representation (CLR) (for representation at mental health tribunals or asylum and immigration cases in the First Tier Tribunal), and Legal Help (advice and help with negotiating but not court work). Each of these types of funding is billed and paid differently and has a different hourly rate. It is worth noting that there are sub-divisions for each funding type. Time frames given below are guidelines only: in reality the various processes involved in claiming fees can be significantly longer.

CLR and Legal Help

Fees for cases funded under CLR or Legal Help are payable by the solicitors and will only be paid once the case has completely finished. Solicitors submit a bill to the Legal Aid Agency covering their own fees, counsel's fees and any disbursements. Payment is commonly received 3 to 6 months after the case is finished. It is not possible to make a claim for payment on account.

Legal Aid Certificated Cases

When a Legal Aid Certificate is in place, payment is made directly to counsel by the Legal Aid Agency.

The date the certificate was issued dictates counsel's hourly rate. How the fees are reconciled will depend on whether the certificate has been applied for via the LAA's online Client Costs Management System (CCMS) or on paper.

Enhancements on final claims and payments on account can be requested on fees for work done under certificates granted on or after 02 December 2013.

Applications for payments on account are submitted directly to the LAA by Chambers. Payments will be made of:

- 12 months have elapsed since the certificate was issued;
- A payment on account has already been made and a further period of 12 months (or 24 months, if there have been 2 payments) has elapsed;
- The proceedings to which the certificate relates have continued for more than 12 months and it appears unlikely that an order will be made for the costs of the case to be assessed within the next 12 months and delay in the assessment of costs will cause hardship to counsel; or
- The proceedings to which the certificate relates have concluded or counsel is otherwise entitled to have the costs of the case assessed or paid but has not been paid for at least six months since first becoming entitled.

An application under (a) or (b) must be made within the period beginning **two** months before and ending **four** months after the event specified in the section.

So, **for example**, an application can be made:

- **10 – 16 months** after issue of the certificate
- **22 – 28 months** after issue of the certificate
- **34 – 40 months** after issue of the certificate

This means that if you are instructed in a case where the legal aid certificate was issued on 2 January 2012 the window for applying for a payment on account is between 2 November 2012 and 2 May 2013. If the case then goes on it will be for the same period but the following year i.e. between 2 November 2013 and 2 May 2014.

Counsel is only entitled to claim one payment on account annually. Payments are often processed within 6 weeks of submitting a claim.

The LAA will pay a maximum of 75% of the amount claimed and will take into consideration what is reasonable, any previous payments on account, the certificate cost limit and sometimes the scope of the certificate.

Further Payments on Account can be applied for, but payment is at the discretion of the LAA.

Pensions and Pension Options

There is a cliché that no one at the Bar ever retires. Whilst this is true for some people and may be true in your case, the reality is that when you get to retirement age, you will want to have the choice of whether to continue, to reduce your hours or to stop work completely. In order to give yourself this choice, you need to start saving and the earlier you start the less per month you must save to ensure a decent income when you get older.

It is not essential to save everything in a pension wrapper – the important thing is that you save. If you are between 20 and 30, you should be looking to save at least 10-15% of your income, whether this is in an ISA, investments or a pension.

The disadvantage of a pension is of course that you cannot access the money until you reach retirement age. Whilst this may be off-putting, bear in mind that it is also an advantage: there will be no option and therefore no temptation to take money out of this savings pot to pay for short-term costs.

The main advantage of pensions over the other savings options is of course the tax advantage: if you're under 75, subject to an annual allowance, all the tax you've paid on the money you contribute to your pension is paid by the government as an additional deposit into your pension pot. So, for example, if you are a basic rate taxpayer and pay £80 a month into a pension, the government will contribute £20 and your pension pot will receive £100 a month.

Free impartial guidance is available from experts at The Pensions Advisory Service (<http://www.pensionsadvisoryservice.org.uk/>). Although TPAS won't advise you on what pension to get, they are a very good jargon-free source of information about the options available.

Record Keeping: Regulatory Requirements and HMRC

- Most chambers have some form of diary system which records your cases, fees, expenses and what has been paid.

- It is a professional obligation to keep proper records of your practice (rC87.2 and gC132 of the BSB Handbook). See also <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/>.
- There is a similar requirement to keep adequate records supporting fees charged or claimed (rC88).
- It is a good idea to set up some record system yourself – for example in Excel – to keep a note of the name and date of case, what the fee was, what expenses there were and whether the fee has been paid. This will allow you to keep track of your income and of the level of debt owed by your instructing solicitors.
- As far as tax is concerned, please see paragraph 60 of the Taxation Handbook [here](https://www.gov.uk/keeping-your-pay-tax-records/overview), as well as <https://www.gov.uk/keeping-your-pay-tax-records/overview>. In brief, you need to keep records of the documents which form the basis of your tax return either on paper or digitally for at least 22 months after the end of the tax year to which they relate. HMRC can fine you if there are missing records.

Study Loans and Pupillage Awards

Study loans are sadly not tax deductible and are not seen by HMRC as a business expense.

Scholarships from the Inns are exempt from income tax.

In relation to pupillage awards the Bar Council and HMRC have reached an agreement as to the taxation treatment of pupillage awards. There are two options:

- **Option 1:** The pupillage award in respect of the pupil's first six months will continue to be tax-free, but the award in respect of the second (or subsequent) six months will be included as normal professional earnings in the year of receipt.
- **Option 2:** Both the 'first six' and 'second six' awards will be taxable in the fiscal year of receipt under the general sweep-up provisions ("income not otherwise charged" see Income Tax (Trading and Other Income) Act 2005, Part 5, chapter 8, s687).

The option that you choose is up to you and will depend on a variety of factors such as the level of your award and the date that your accounting year starts. You should

discuss this with an accountant if you are in any doubt (see further the Taxation Handbook, below).

There are also National Insurance differences; under Option 1 Class 4 NICs are chargeable, but under Option 2 the award is exempt – see the Taxation Handbook at paragraph 69 (link below).

For more detail on loans and awards generally see paragraphs 61-84 of the [Taxation Handbook](#).

Tax and National Insurance

There is extensive guidance on all aspects of tax, capital allowances, the treatment of Chambers' expenses, VAT and pensions, including a section specifically providing advice to pupils and barristers starting practice, in the Bar Council's [Taxation Handbook](#).

The following are some key points to bear in mind. Always take full advice or conduct your own research with the help of the Taxation Handbook (see link above).

- It is important to register with HMRC as soon as you start practising (i.e. as soon as you are on your feet – or sitting at your desk – generating fees).
- To fill in a tax return, you need to register with HMRC. You can then fill in a paper return or an online return as you choose. HMRC will calculate what you owe and will send you the bill. Barristers pay tax in two instalments; the first in January, the second in July.
- As a self-employed practitioner your tax is paid on account in advance of the next year. This means that your first bill will be made up of your tax for the previous year, and half of that again on account. The second payment on account of half again then falls due in July.
- From the tax year 2013/14 onwards, you may elect to be taxed on either a cash basis or an earnings basis. If you are taxed on a cash basis, you will be taxed on cash received in the relevant tax year. Before you choose the cash basis read the HMRC guidance to confirm your eligibility to use it: there are amongst other things entry and exit thresholds based on the level of receipts. If you are taxed on an earnings basis your taxable profits will be the profits earned in the relevant tax year, not cash actually received. There are different, detailed rules associated with each basis of taxation: see paragraphs 36-42 of the Taxation Handbook.
- Bear in mind that you have the option of making your first six award tax free.

When you start receiving income, we recommend setting up a separate savings account as soon as possible. As soon as you pay in a cheque, immediately transfer approximately 25% of it (after deducting the VAT element) into this account. Don't be tempted to dip into the lump sum that's building up in this account as you'll need it when the tax comes to be paid. Keep an eye on the amounts in this savings account. If you seem to be accruing a surplus, you may be able to reduce your contribution to say 22% or even 20%: if the amounts saved seem a little low you may wish to up the percentage to 30% or 35%.

YBC TIP:

Premium bonds are quite a good place to put your tax savings as:

1. The income is tax free
2. They are accessible but not so easily accessible that you are tempted to use them for a holiday
3. It's quite exciting when you get told you have won something (even though it turns out only to be £25), and
4. You might win £1m!

For deadlines and penalties, see below.

Tax deadlines and penalties

The HMRC newly self-employed helpline:

There is an HMRC helpline specifically for those newly self-employed. Phone: 0300 200 3504.

- Whilst you can fill out a paper return with an earlier deadline (31 October) a self-assessment tax return must be completed by 31 January following the end of the relevant tax year (which usually ends on the 5 April in the previous year).
- It is certainly worthwhile employing an accountant to fill this out for you – the form is not straight-forward and using an accountant is likely to increase your cash flow (by setting your accounting year end at an advantageous date), save you money (as they know what can properly be claimed) and also save you from sleepless nights (because they have filled in all the correct boxes and reminded you that you made a payment on account in July so you do not pay HMRC twice).
- This goes *a fortiori* for anyone who is mixing self-employed practice with employment e.g. as a judicial assistant at the Court of Appeal or the Supreme Court.

- NB if you obtain income from other sources e.g. from a property which is rented out or dividends (which carry a 10% tax credit) this will also need to be declared in your self-assessment.
- For further information see the Taxation Handbook. Income tax is dealt with from page 8.
- Payments are due on the 31 January and the 31 July each year (the July payment is on account of the next year). This is explained in detail in the Bar Council's Taxation Handbook from paragraph 7.
- Penalties are incurred if the self-assessment is made late, the tax is paid late or the assessment is wrong and you are at fault (including negligence).
- Significant penalties should be avoided, should you ever wish to apply for judicial office.

Terms of Payment: Privately paid work and work done for the GLD

- In the case of **work done for large insurance companies and for the government via the Government Legal Department civil panel counsel** fees are, usually, paid fairly promptly.
- If your work is under the **Bar Contractual Terms** then clauses 12.4-12.6 provide that the invoice must be paid within 30 days of delivery, without any set off. Failure to pay within that time will entitle the barrister to charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and/or sue for payment. In addition, you are entitled to refuse to do any further work on the case unless payment for further work is made in advance (subject to your obligations to the Court and other BSB Handbook provisions).
- If you are doing the work on the **COMBAR and City of London Law Society terms** then clause 9 provides for payment and billing arrangements – see <http://www.combar.com/about-us/combar-clls-contract-terms/> and associated links.

In reality even with the contractual provisions you may have to wait several months until you are paid. You should allow for a cash flow that is approximately 2-3 months 'out' from when you are billing.

Terms of Payment: Publicly funded work

The position in relation to publicly funded payments is significantly different.

In Legal Aid cases, because the money is coming from government, most barristers do not use contractual terms. However, the Bar Council has produced a clause that barristers can use in civil Legal Aid cases to give them contractual protection. See <http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/remuneration-guidance/funding-publicly-funded-civil-work/>.

Legal Aid fees are paid by the Legal Aid Agency. The fee schemes and payment arrangements are complex and vary between the different fee schemes. The various regulations are in different places on the LAA website, but your clerks will be the first port of call and guidance.

In criminal cases in the Crown Court the average time for payment is around 3-5 weeks from the submission of a claim at the end of a case. The Legal Aid Agency will send an 'assessed return' and then payment. However, if there is a lack of records (such as a missing indictment or page count) this can delay payment. For Magistrates' Court work in crime, regrettably, payment for counsel depends on when the solicitor bills the case, when they receive payment and when they pay your fees. If you are having consistent problems with a firm of solicitors not paying you for Magistrates' Court cases talk to your fees clerks or contact the Bar Council's Ethical Enquiries Service on Ethics@BarCouncil.org.uk or telephone 0207 611 1307).

Edna Hackman, Fees Clerk at Landmark Chambers explains the regime for payments in publicly funded civil cases:

Excluding family work, the three main types of Civil Legal Aid are Full Public Funding (also known as Certificated Work), Controlled Legal Representation (CLR) (for representation at mental health tribunals or asylum and immigration cases in the First Tier Tribunal), and Legal Help (advice and help with negotiating but not court work). Each of these types of funding is billed and paid differently and has a different hourly rate. It is worth noting that there are sub-divisions for each funding type. Time frames given below are guidelines only: in reality the various processes involved in claiming fees can be significantly longer.

CLR and Legal Help

Fees for cases funded under CLR or Legal Help are payable by the solicitors and will only be paid once the case has completely finished. Solicitors submit a bill to the Legal Aid Agency covering their own fees, counsel's fees and any disbursements. Payment is commonly received 3 to 6 months after the case is finished. It is not possible to make a claim for payment on account.

Legal Aid Certificated Cases

When a Legal Aid Certificate is in place, payment is made directly to counsel by the Legal Aid Agency.

The date the certificate was issued dictates counsel's hourly rate. How the fees are reconciled will depend on whether the certificate has been applied for via the LAA's online Client Costs Management System (CCMS) or on paper.

Enhancements on final claims and payments on account can be requested on fees for work done under certificates granted on or after 02 December 2013.

Applications for payments on account are submitted directly to the LAA by Chambers. Payments will be made of:

- 12 months have elapsed since the certificate was issued;
- A payment on account has already been made and a further period of 12 months (or 24 months, if there have been 2 payments) has elapsed;
- The proceedings to which the certificate relates have continued for more than 12 months and it appears unlikely that an order will be made for the costs of the case to be assessed within the next 12 months and delay in the assessment of costs will cause hardship to counsel; or
- The proceedings to which the certificate relates have concluded or counsel is otherwise entitled to have the costs of the case assessed or paid but has not been paid for at least six months since first becoming entitled.

An application under (a) or (b) must be made within the period beginning **two** months before and ending **four** months after the event specified in the section.

So, **for example**, an application can be made:

- **10 – 16 months** after issue of the certificate
- **22 – 28 months** after issue of the certificate
- **34 – 40 months** after issue of the certificate

This means that if you are instructed in a case where the legal aid certificate was issued on 2 January 2012 the window for applying for a payment on account is between 2 November 2012 and 2 May 2013. If the case then goes on it will be for the same period but the following year i.e. between 2 November 2013 and 2 May 2014. Counsel is only entitled to claim one payment on account annually. Payments are often processed within 6 weeks of submitting a claim.

The LAA will pay a maximum of 75% of the amount claimed and will take into consideration what is reasonable, any previous payments on account, the certificate cost limit and sometimes the scope of the certificate.

Further Payments on Account can be applied for but payment is at the discretion of the LAA.

VAT

The current threshold for registering for VAT is a turnover of more than £82,000. If you are at or near this threshold it is essential that you consider whether you need to register for VAT as soon as possible: you must register before you go over the threshold and it is easy to lose track.

- Many chambers encourage tenants to register for VAT well before the threshold. First, it ensures that there is no need for concern about exceeding the threshold and careful monitoring of your finances accordingly. Second, it indicates to solicitors, clients and opponents that you are an established and experienced practitioner. In many civil sets, pupils are encouraged to register as soon as they become tenants even if there is no prospect of them making this kind of money for several years.
- If you undertake Crown Court criminal legal aid work it is recommended you are VAT registered, because your fee claim may have to include the fees of other barristers who worked on the case. If they are VAT registered and you are not, you cannot claim the VAT back from the Legal Aid Agency but will have to pay the other barristers the VAT out of your own pocket. See the Bar Council's Graduated Fee Payment Protocol [here](#).
- Don't forget to add VAT to speaking fees and to writing fees and don't forget to account for the VAT as well. This applies to income tax as well as VAT.
- Many accountants offer completion of VAT returns for free if they are completing your tax return; investigate whether your accountant offers this service.
- VAT returns are required four times a year within a month of the end of each quarter, with the VAT bill to be paid within a couple of weeks thereafter.
- Once you register for VAT, let your clerks know immediately and give them your VAT number so that they can add it to your invoices.

We would recommend setting up a separate savings account into which you can pay the VAT element of every payment you receive. This avoids any panic at the end of the quarter about having the required sum available.