

INTRODUCTORY GUIDE

to instructing a barrister in our Property, Estates, and Planning Team

for Licensed Access and Public Access work

The work that a barrister does

I specialise in legal advice, advocacy, arbitration, adjudication, third party determination, alternative dispute resolution, and mediation. You can instruct me as your barrister. Alternatively, the parties can agree to jointly appoint me as arbitrator, adjudicator or mediator or early neutral evaluator.

I usually send my Opinions and Advices by email. I also advise in conference at Guildhall Chambers, Bristol, or on site or at other convenient locations, or by telephone, or video conference. I can ask someone to attend the meeting to take notes for me. If previously requested, I will afterwards provide a summary of the meeting.

I prepare statements of case, submissions, and written and oral arguments. I represent clients before courts, tribunals, inquiries, arbitrators and adjudicators and also in face-to-face negotiations and mediations. I can help to finalise witness statements. I can also advise you about where you might find useful evidence and how to present it.

My clerks at Guildhall Chambers, Bristol, handle my business diary, fees, terms of engagement and associated administration. They do not provide legal advice; but they can provide further guidance on how we work.

Property disputes etc.

I advise on a wide variety of property, estate and planning matters, other than taxes and duties. For more details of my specialist areas of law, please see my webpage on the Guildhall Chambers website, www.guildhallchambers.co.uk.

If you send comprehensive plans and maps and a good selection of photographs, I usually do not need to see the property before advising the first time. A video of the premises can be useful too.

If appropriate I will look at Google Satellite and Streetview and (if available for the location) Bing BirdsEye, as well as any other official, and other websites suggested by you. Even so, please note that courts rarely treat websites themselves as evidence at hearings, and please note that I do not source (obtain or supply) evidence unless specifically agreed. In the event of a hearing, you must provide copies of all significant documents and webpages in a carefully arranged bundle for any hearing. I can advise you or your litigation solicitors or your expert witness on what documents to include and on what witness statements, reports and other documents to obtain.

Please note that I usually need to visit long before any hearing of issues relating to the physical characteristics of the property or its surroundings. This visit is usually also a very worthwhile opportunity to discuss the case with you, your solicitor and any expert witness. The topics could include best evidence, expert reports, correspondence, negotiations, tactics, presentation, court/tribunal/hearing procedures, and particular points that you wish to discuss.

When to instruct me

It is usually best to ask me to advise at the earliest possible moment, even if only in outline at the time and even if the dispute has not actually started. If at all possible do not delay until legal proceedings are threatened or have started, still less until just before the hearing. Fees can be higher for urgent or complex matters. The earlier you instruct me, the more I can do for you to set up the litigation in a way that most favours you. An early Advice or Opinion usually helps to lay the best foundation.

Early advice on evidence (documents and witnesses) can help to make sure that the best available evidence is sourced and checked in good time and that the best case is presented without (sometimes serious) gaps that are not obvious to a non-lawyer. Timely advice as to the contents of formal court documents (such as a Particulars of Claim or a Defence) can be a crucial to making sure that the most worthwhile issues and legal points are presented at the hearing and that no significant issues or legal points are left until too late. Once the litigation has actually started, procedural time limits apply.

If you consult me in time, I can advise you and your solicitor on particular aspects of correspondence, offers and negotiations. These can help to achieve a worthwhile result without the expense of litigation or a hearing or bring the dispute to an early end or, with the right wording, put your opponents at risk of being ordered to pay a substantial part of your litigation costs.

If you carefully follow the guidance below, I can usually supply initial advice, or even an Opinion, on the basis of the paperwork that you supply. In this way you could save some of the cost of initially engaging a solicitor or other professional to instruct me. Then, if litigation (legal proceedings in a court or tribunal) becomes a real possibility, you can engage a solicitor to attend to procedural matters, co-ordinating all helpful evidence, and conducting litigation correspondence.

Please note that there can be times when I am almost, or totally, unavailable, for example because of existing commitments or because I am in court for a day or more or on holiday. Please make sure that you or your solicitor informs my clerks immediately of any known or possible hearing date or any other time limit. My availability can then be checked and a reservation made.

If I am not available or you would like another barrister, the clerks at Guildhall chambers can assist you to select another barrister in the same or another team. Details of all our teams are on the Guildhall Chambers website.

My fees, and terms of engagement

My fees depend on the type of case and degree of expertise. One of my clerks will provide you with an estimate or quotation when we know enough about the case.

My time charges are usually the same whoever instructs me, but experience shows that significantly more of my paid time is often necessary when I am not instructed through a litigation solicitor, namely a solicitor who has a working familiarity with the applicable procedural rules and practice and with effective litigation correspondence. Depending on the case, this additional time could include time spent on explanatory advice and guidance. Before I can most effectively advise you, it can include time spent on sorting, and initially viewing source documents and requesting further documents. If you engage a litigation solicitor, he or she would do most of these explanatory and preliminary tasks, often with secretarial and other assistance. I do not have secretarial or other assistance and would charge for all such preliminary work at the same rate as for advising or representing you.

It is very important that you assemble and sort all the paperwork as explained below in the section "How to instruct me". If you do not do this, or supply documents piecemeal (in variable instalments), or supply only parts of documents, or omit significant documents, correspondence, or information, my fee quotes are likely to be higher and completion of the work delayed. Alternatively, at an agreed fixed fee, it is sometimes appropriate to initially meet at Guildhall Chambers with few or no documents as a preliminary scoping exercise and outline discussion. To advise fully and effectively, I will need to see most of the documents that would be presented at hearing.

My fees will usually be based on a quoted rate and agreed in advance of each item of work. You can always ask my principal clerk what is my typical hourly fee rate. I will charge for travel time (for example to court, site, or other agreed meeting place) other than the first hour in each direction. Overnight away from home and associated subsistence will be charged as one hour. Unless otherwise agreed, I will pay my travel, overnight and subsistence expenses out of these fees. Please note that, when a loser is ordered to contribute towards the litigation costs of a winner, this might exclude fees for travel time from out of region.

Who I accept instructions from

I accept instructions from

- Solicitors (under the Bar Council's Code of Conduct for Barristers).
- "Licensed" organisations or licensed professionals such as members of professional institutes (approved under the Bar Council's Licensed Access Rules), for example the Royal Institute of Chartered Surveyors.
- Direct from anyone else (under the Bar Council's Public Access Rules) if I am a Public Access Practitioner. This is explained below.

If you are unsure which of these to select, I recommend that you first consult the Citizens Advice Bureau www.citizensadvice.org.uk or a solicitor www.lawsociety.org.uk/find-a-solicitor. The Bureau also provides free advice about family, debt, benefits, housing, education or employment problems. Some solicitors will provide a short period of free discussion of your situation. If you have a straightforward claim only for money, you can consider whether to make your claim on line at www.gov.uk/make-court-claim-for-money/overview

If you wish financial assistance, you should consider as soon as possible whether the fees and expenses could be met, or partly met by a person who has a significant interest in the same matter (such as a neighbour or co-complainant or co-victim) or by a trade union or insurer or legal aid. You are strongly advised to check your existing household insurance policy to see if you have cover for disputes.

To obtain legal aid you must consult a solicitor (who can then instruct me). For information on legal aid, see www.gov.uk/community-legal-advice and www.gov.uk/check-legal-aid.

Public, licensed and solicitor access

My early preliminary advice will help to identify key areas for attention and how best to go forward. If you decide to engage me direct, a solicitor or conveyancer can still give you valuable guidance beforehand on what to send to me and with obtaining legal documents (such as SnapShot Maps from the Land Registry or documents from a local Planning Authority or other regulator).

Litigation solicitors (authorised "litigators") can conduct all procedural correspondence for their client(s) with the court or tribunal or arbitrator. They can also conduct effective correspondence with opponents and their representatives. They can interview witnesses and compile witness statements. Experience shows that they can do these tasks much more effectively than most clients would achieve themselves. To maintain professional independence as a barrister advocate, I usually do not interview witnesses as to what they would say if later called to court.

Please note that, if you do not engage a solicitor to manage your litigation, your compliance with any court, tribunal or similar time limits is your personal responsibility almost as if you were a solicitor authorised to conduct litigation. If you delay, your situation will become more uncertain and more paid work might be required to attempt to rectify the situation. Courts, tribunals, inquiries, arbitrators and adjudicators usually require special reasons for any extension of time.

In complicated cases it is anyway usually sensible to engage a litigation solicitor to “go on the record” before any litigation becomes serious. A solicitor or other professional can be accepted as your correspondence agent by tribunals, arbitrators or mediators. Until then you will be treated as a “litigant in person” and you will be responsible for handling all correspondence; for preparing all evidence; for further instructing me and any expert witnesses; for complying with the complex requirements of pre-hearing, protocol and costs schedule procedures; and for ensuring that all time limits are met or that prompt requests to the court to extend time are made.

For and Citizens Advice Bureau leaflets and Ministry of Justice Handbook, Google “Litigants in Person” (in quotes). The CAB leaflets give an overall view, but you may need consult the MoJ Handbook at every stage. Then, for yet more detail, Google “Civil Procedure Rules” or “CPR” to find detailed procedural rules, practice directions and protocols: these are the procedural provisions that the District Judge will actually follow.

Errors in court, tribunal or inquiry procedure, or in timely sourcing of documents, evidence and reports, can put you at significant disadvantage. A solicitor can give these matters ongoing attention and can instruct me at any time to advise and to represent you at any hearing, conference, meeting or mediation. A non-solicitor professional who is familiar with applicable procedures can provide similar services in tribunal proceedings, inquiries, and arbitrations, but any legal advice that he or she gives might not be protected from disclosure. The legal advice that I provide, or a solicitor provides, is usually entirely confidential.

Your case can be significantly weakened if the judge does not hear all appropriate witnesses or does not see relevant documents. Identifying these is often not as obvious as non-lawyers might believe. I can advise you on witnesses and documents. So too can a litigation solicitor or licensed professional who is familiar with the relevant rules and protocols. It might also be necessary to apply at an early stage for orders requiring an opposing party to supply or obtain relevant documents.

Unless you have a litigation solicitor or licensed professional, you will be personally responsible for producing or agreeing the hearing bundle(s) in accordance with specific rules, directions and guides. The proper and effective arrangement of the bundle(s) can have a significant effect on the presentation of your case; on my preparation time; on the length of the trial; and on the solicitor-like assistance that I might ask you to provide, such as immediately locating relevant pages during a hearing.

Under the Public Access Rules, I can accept instructions from an intermediary who is not a solicitor or other professional, for example a family member or friend or attorney who will be responsible for paying my fees. Even so, you yourself will remain the “litigant in person”, and you must make sure that you have effective arrangements with your intermediary about who will be responsible for what actions and about keeping each other informed.

Public Access is not usually suitable for disputes involving long histories or many documents, or extensive correspondence or accounts, or detailed negotiations. For example, Public Access is often not suitable for court disputes about boundaries or rights of way or for neighbour injunctions for trespass or nuisance. But, in such cases my early preliminary advice, even before you engage a solicitor or a Licensed Access professional, can help you to decide what to do and how to handle the matter.

Refusal of instructions

If at any time I consider that, in all the circumstances, it is not in your best interests, or not in the interests of justice, to instruct me or to continue to instruct me on a Licensed Access or Public Access basis, professional rules require me to inform you and to withdraw as soon as reasonably practicable pending instructions from your solicitor or another licensed access professional or some other appropriate intermediary.

Please note that, if I have not advised you previously on the strengths and weaknesses of your legal case, or on source documents and witness evidence, I will usually accept a brief (for a trial or other trial-like hearing) only through litigation solicitor or an appropriate licensed professional.

I would have the same concerns if the pleadings (for example, your statements or particulars of case), witness statements, other evidence, and hearing bundle(s) have not been thoroughly prepared. Errors and omissions in these can be difficult or expensive or impossible to remedy after disclosure, especially after the hearing date has been set. The contents, arrangement, and omissions from the hearing bundle(s) can make or damage a case.

Other circumstances in which I may refuse instructions are detailed in our terms and conditions and professional codes. We will supply details when we forward our Agreement Form to you to complete to confirm agreement on fees and scope of work.

Correspondence and “going on the record”

You, or your solicitor, or your other professional, or intermediary, must have email facilities that can send and receive large scanned document files.

You or they should correspond with, and deliver documents to opposing parties and the court, tribunal, inquiry, arbitrator, adjudicator or mediator and must make sure that procedural time limits are known and met.

I do not go “on the record” to receive documents on your behalf, but, if you have informed the court, tribunal, inquiry, arbitrator, adjudicator, or mediator that you are engaging me for a hearing, my clerks will respond or make representations to them as to hearing dates.

Please note that, in most disputes, I correspond for my client(s) with only the judge/arbitrator and opposing advocates in connection with an imminent, ongoing, or recently finished hearing, e.g. supplying written outline “skeleton” arguments and finalising the wording of agreed or decided directions and orders. You or your solicitor or other professional representative will be responsible for all other correspondence, including correspondence with opponents and their representatives. My primary work is specialist advisory and advocacy, or as an arbitrator, adjudicator, mediator or early neutral evaluator.

How best to instruct me

To minimise the time that you pay me to work for you and to assist me to focus on the points that matter, please assemble the paperwork as mentioned below. This may seem demanding, but experience shows that it is usually the best way to prepare.

I need to see only paperwork that appears to be legally relevant to the issues; but it is often not easy or possible for a non-lawyer to identify what might be legally relevant or material. Litigation solicitors specialise in doing this and in instructing barristers. Even if you instruct me direct, a solicitor can help you identify what to send and how to arrange it and what questions to ask, to make best use of my services

If you send too few relevant papers, you will be paying for me to assess what you have sent and then requesting more. This can cause delay unless you make clear that you wish me to supply an incomplete advice or to supply an advice that is extended (at your expense) by exploring possibilities that are later found not to be significant.

If you email too many documents, you may be paying for me to print, arrange and study unnecessary items. Email enclosures tend not to block print in a satisfactory sequence, especially if of mixed file types (e.g. msg, eml, pdf, doc, docx, xls, tiff, and jpg) or attachments to attached emails. These often need substantial arrangement time after printing, unless prepared with very careful file naming, grouping and indexing. If emailing, it is often best to send all documents as pdfs, sequenced as mentioned below. Please note that I do not have a secretary. My time on printing, arranging and bundling paperwork into perusable sequences will be charged to you at my full rates.

If you wish me to look at more than 80 pages (including your instructions and statements), I strongly recommend that you sequence all documents as mentioned below and send the bundles by post or courier to my principal clerk as mentioned below. Please do not post (or deliver) any original item or your only copy of anything unless it is impossible to photocopy or scan properly (e.g. some

ancient indentures) even at a properly equipped copy shop. If even so you have to provide originals, it is very important that you do so by tracked postage or courier and that you indicate (for example with a peel-off label) which items are originals that I should not highlight or mark.

If you need advice urgently, it is usually best to ask a litigation solicitor to instruct me. My engagement contract paperwork for solicitors is quicker and simpler.

Bundles (Please follow this sequencing guidance very carefully)

To give you an effective assessment, I need to see many of the items that the judge would see if the matter is ever contested. The list below is just an initial list of the sorts of items that can matter. When you have collected these together, please email or send (not fax) them to my principal clerk:-

- *your name, full postal address and full contact details. (A non-solicitor professional should also supply his institute membership number or a copy of his membership certificate or Licensed Access certificate.) We will need this information for the form of agreement for engaging me as mentioned below.*
- *An indication of your experience of property, estate and planning transactions and law, unless you are instructing me through a solicitor;*
- *a letter or statement or instructions*
 - *setting out **as clearly as possible and in date sequence***
 - *significant events from beginning to end,*
 - *who is who, what their roles are, and who owns what,*
 - *full details of the dispute and who claims what,*
 - *any points that you or anyone else thinks are significant;*
 - *listing the points and questions that are of particular concern;*
 - *listing any particular legal or other points that you wish me to consider; and*
 - *saying whether you wish me to advise in writing or you wish to discuss the matter at a preliminary meeting at Guildhall Chambers after I have had an opportunity to study the paperwork that you send.*
- **Copies attached in sequence (and in colour if the item is in colour) of**
 - *the paperwork for the court, tribunal, inquiry, arbitrator, mediation, etc. including all claims, defences, witness statements, exhibits, expert reports, Decisions, Directions and Orders, **in date sequence, earliest at the front;***
 - *up-to-date obtainable title plans and documents for any property in dispute or for all relevant neighbouring properties, including copy registered title plans and registered titles obtainable from HM Land Registry, **in date sequence for each property and with plan(s) at the front of each title/deed/agreement***
 - *other relevant legal documents, wills, certificates, permissions; agreements, etc. **in date sequence, earliest at the front;***
 - *relevant correspondence and negotiations (and notes and dates of any relevant conversations) with opponents, councils and others and/or with or between representatives etc., (i.e. correspondence and conversations that you or they might consider significant), **page numbered in date sequence, earliest at the front), page numbered in date sequence, earliest at the front;***
 - *relevant correspondence and attendance notes (and notes and dates of any relevant conversations) between you and any previous advisers, including all letters and notes of previous legal, valuation or other advices, opinions, and assessments received, **page numbered in date sequence, earliest at the front;** and all correspondence from potential witnesses;*
 - *any applicable insurance policy, such as for legal expenses insurance, and any correspondence with insurers about the current dispute;*
 - *any expert report, even if only a preliminary draft or letter;*
 - *any significant or helpful maps and plans and organisation diagrams;*
 - *any relevant planning applications, permissions and approved plans, and*

- *any significant or helpful photographs **in date sequence and numbered**, with a plan, sketch or description of when, from where, and in which direction, each was taken. Also any useful video or other recordings.*

Arranging the paperwork

You, or your solicitor (or permitted professional), will need to assemble most of these items for whoever advises or to prepare for any application or hearing. Although time-consuming, it is very important that you carefully collect together, sort (sequence), and supply this wide range of documents and information at the outset. Then I can provide effective advice, for example on tactics and negotiations, on preparing for a hearing, and on what judgment, decision or orders are likely.

Please keep the original or your only copies of items that you already have. Send only good copies or scans for my use. Please do not use staples (I often need to re-arrange the sequence of documents) or plastic spines or sleeves (These hinder page turning) or ring binders (These often fail to hold documents securely). Please use lever-arch folders, or (very economically) treasury or India tags or other reusable fasteners through a punched hole near the top left corner.

I do not have secretarial assistance, So, you usually get better value for money if you arrange the paperwork as indicated above. Otherwise I might need to charge you at my rates for arranging it myself or have less allocated time for considering its contents and advising you.

Please note that I am required to retain many of the items that a Public Access or Licensed Access client sends to me. If you ask us to return any documents, we may require you to pay our reasonable charges for copying and returning them.

Whether or not you instruct me, confidential documents will remain confidential, subject to legal requirements.

Next steps: we look forward to hearing from you

- ***Please email copies of the items listed above to my principal clerk for Public and Licenced Access matters,
Mrs Maggie Pearce at Maggie.Pearce@GuildhallChambers.co.uk***
- *If sending anything by post, please send it to her at [Guildhall Chambers, 23 Broad Street, Bristol BS1 2HG](#), **making sure that you send copies, not originals.***
- *We will then assess the suitability of the case, the likely work and fee.*
- *If you agree the proposed fee, one of my clerks will send you terms of engagement and an Agreement Form for you to complete and sign.*
- *Unless you are a solicitor based in England or Wales (or we otherwise agree), we will then await the completed signed Agreement form and payment by credit card or bank transfer, or confirmed payment to an agreed stakeholder (such as Barco) or cleared cheque.*
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