

PUBLIC ACCESS: HOW TO GIVE A DIRECT INSTRUCTION TO A BARRISTER

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This note provides an overview of the Bar Council's public access scheme. It describes key terminology, how the scheme works and provides practical guidance on the procedures to follow and considerations to have in mind when instructing a barrister directly. This note is particularly relevant to the in-house lawyer with little contentious experience but who is seeking to reduce litigation costs for their client by approaching the bar directly.

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WHAT IS PUBLIC ACCESS?

"Public access" is a scheme which allows anyone to instruct a barrister directly without going through a solicitor. Traditionally, if you wanted representation or advice from a barrister you had to first engage a solicitor who would then instruct the barrister. That changed in 2004 when the Bar Council, in response to concerns that the traditional model restricted access to justice, introduced the public access scheme.

The terms "public access" and "direct access" are used interchangeably in practice. "Public access" will be used in this note.

Barristers can be instructed in one of three ways:

- By a professional client (which usually means a solicitor but can include other types of lawyers such as legal executives).
- By a licensed access client (which is someone, usually a member of one of the professions, who has been granted a special licence to enable them to instruct a barrister).
- By anyone else under the public access scheme.



In the majority of cases, barristers are still instructed by a solicitor. However, direct instructions are becoming increasingly common. Anyone (an individual, a business or an organisation) can engage a barrister under the public access scheme. There can be significant savings in terms of cost in doing so. Any case that a barrister could do if they were instructed by a solicitor can be done on a direct instruction.

See [Box, A typical case?](#).

KEY TERMINOLOGY

Bar Council: The governing body for barristers in England and Wales.

Barristers' clerk: An employee of a barristers' Chambers who performs an administrative role, such as taking bookings and agreeing fees.

Bar Standards Board (BSB): An independent body set up by the Bar Council to regulate and discipline barristers.

Chambers: A barristers' chambers. (All barristers in independent practice must be a member of a Chambers. Chambers vary in size from one to several hundred members.)

Client care letter: A letter sent by a barrister to his public access client setting out the work they are going to do and their terms and conditions.

Conducting litigation: Conducting legal proceedings with the requisite authority to do so. (There are limited categories of people who are authorised to conduct litigation. These include solicitors and a small number of barristers (see [Box, What is "conducting litigation"?](#))).

Counsel: Another name for a barrister. Hence "taking counsel's opinion" means taking advice from a barrister.

Lay client: Any client of a barrister who is not a professional client (for example, a solicitor) or a licensed access client. In a public access case the person or body engaging the barrister is referred to as the lay client.

Litigant-in-person: A person who is conducting their own litigation. A lay client will remain a litigant-in-person even though they have instructed a public access barrister if they retain management and control of their case.

Public Access Rules: The rules in the Barristers Code of Conduct which barristers must follow when they accept instructions directly for the public.

SCOPE OF THE DIRECTLY-INSTRUCTED BARRISTER'S ROLE

What the directly-instructed barrister generally can do

A barrister instructed on a public access basis will not ordinarily be carrying out the conduct of the litigation in the manner that a solicitor would. The role of a barrister in a public access instruction is therefore essentially the role that the barrister would have were they being instructed in the traditional manner via a solicitor. The work a directly instructed barrister can do includes:

- **Advice:** advising a client in writing or in conference (which may be a face-to-face meeting or via telephone or video link).
- **Advocacy:** representing a client at a hearing before a court, tribunal or arbitrator.
- **Drafting:** preparing documents such as court pleadings, witness statements or contracts.

- **Settlement:** attending settlement meetings such as round tables, mediations or other forms of alternative dispute resolution (ADR).
- **Correspondence:** sending letters on behalf of a client such as letters of claim or an offer letter.

It is an obligation of the Public Access Rules that the barrister sets out in the client care letter the work they are agreeing to carry out, and the fee for that work. The client care letter serves both as a contract and as compliance with the information requirements of those rules. As a result, rather than a retainer covering all work that might be necessary to conclude the matter, public access instructions tend to be on a piecework basis, in the same way as when a barrister is engaged by a solicitor on the client's behalf. The barrister is instructed to carry out a defined and specific piece of work (for example, to advise the client in writing) and a fee is agreed for that work. Fees are generally agreed either on a fixed fee or an hourly rate basis.

Once the barrister has completed that work, they have complied with the terms of their instruction. The lay client will then need to instruct the barrister again for the next piece of work, with a further client care letter and a further agreed fee. This ensures that the lay client has control at all times over the cost of instructing the barrister. However, it also means that, unlike in a solicitor instruction, the barrister has no duty or obligation to carry out any work other than that which is set out in the client care letter. If a barrister were to carry out additional work without the agreement of their client, they would be in breach of the Public Access Rules.

GUIDANCE FOR LAY CLIENTS

The Bar Standard Board has produced guidance for lay clients instructing counsel on a public access basis. (https://www.barstandardsboard.org.uk/media/1580314/public_access_guidance_for_lay_clients_-_jan_2014.pdf)

What the directly instructed-barrister generally cannot do (“conducting litigation”)

A barrister acting for a client through direct instruction under the public access scheme will ordinarily be engaged to carry out discrete steps in the course of the case. This means that the barrister does not take over the conduct of the litigation in the manner that a solicitor would. A public access barrister is precluded from undertaking the conduct of litigation for a client unless authorised by the Bar Council to do so. Public access barristers have only been allowed to seek this authorisation since 2014 and, at present, the vast majority of them do not have this right. The Bar Standards Board's website maintains a register, searchable by name, which lists all barristers and states whether they are public access or conducting litigation qualified.

In the traditional model, the lay client instructs a solicitor to conduct the litigation. The solicitor is, by virtue of the authority granted by the Law Society, entitled to conduct that litigation on the client's behalf. The solicitor will then take the necessary steps in the litigation, which may include instructing a barrister to carry out certain tasks, such as drafting pleadings or representing the client at court.

In a public access instruction, there is no solicitor. As already noted, whilst barristers are able, in principle, to be authorised by the Bar Council to conduct litigation, most are not. The lay client as litigant in person takes on the role of the solicitor and conducts the litigation.

A lay client who is involved in litigation has a number of choices. They may run the whole case themselves, as litigant in person, without help from anyone. They may run the case as litigant in person but seek help from a public access barrister (or, indeed, from a solicitor) as and when required. Alternatively, they may engage a solicitor (or a barrister with conducting litigation authorisation) to run the case for them from start to finish.

Barristers who are so authorised can choose to carry out the conduct of litigation, but they are not obliged to do so. Any such agreement could be to carry out specific aspects of the conduct of litigation, such as the issuing of an

application or serving a pleading, or to carry out the entire conduct of the litigation in the manner that a solicitor would.

For more information on what “conducting litigation” means see [Box, What is “conducting litigation”?](#)

ADVANTAGES AND DISADVANTAGES OF PUBLIC ACCESS

The main advantages of instructing a barrister directly are:

- **Cost.** A client can instruct the barrister directly to perform the work that requires a barrister, but carry out themselves the general management of the case (for example, the work that would normally be done by a solicitor such as corresponding with the other party and the court, collecting evidence and preparing document bundles). Many public access barristers will agree fixed fees for defined work, which also allows the client to control the budget and not receive unexpected bills. This will usually result in lower costs, although this is not guaranteed.
- **Direct contact between client and barrister.** In cases where the client simply wants the advice or opinion of their barrister, having to go through a solicitor can add an unnecessary layer of complexity.

The main disadvantages of public access instruction are:

- **The absence of a solicitor conducting the litigation.** The barrister is responsible for carrying out only that work that is expressly agreed in the client care letter, and, unless this has been expressly agreed, has no general duty to advise or take steps outside of the work that they have been instructed to do. Instead, the client is responsible for conducting the litigation which includes giving an address for service, meeting deadlines, filing and serving documents, dealing with correspondence and other things falling within the general management of the case. A barrister, unless specifically authorised to do so by the Bar Council, is not in any event permitted to conduct litigation. This means that a public access client must be confident that they can manage the case. They can however instruct the barrister to give them advice if they are unsure at any stage as to how to proceed.
- **Potential lack of continuity.** A solicitor provides a continuity of legal advice and case management; a barrister operates as a sole practitioner and may not always be available to provide advice and, indeed, is under no continuing obligation to do so. A barrister is also under no duty to take on a public access case and, in particular, the “cab rank rule” does not apply (see [Box, Can a barrister refuse to take on a public access case?](#))

HOW TO FIND A BARRISTER

There are around 13,000 barristers in independent practice in England and Wales. About half are qualified to accept direct instructions. Therefore it should not be difficult to find a public access barrister practising in the relevant area of law.

According to a survey carried out for the Public and Licensed Access Review Report, published by the Bar Standards Board in March 2017, most public access clients find a barrister either through a recommendation or through direct marketing, such as chambers’ websites. Most chambers have a page on their website listing their members who accept direct instructions and the type of work they do. Some chambers (such as www.barristersdirect.co.uk) have a specialist site dedicated to public access work.

There are also some portal websites where barristers from different chambers advertise. The Bar Council runs its own such site (www.directaccessportal.co.uk), although not all public access barristers are listed on this site. Other portals run by independent providers include Clerksroom, ShenSmith Barristers and MyBarrister.

Although barristers’ chambers tend to be situated in the major centres of population (with by far the largest concentration being in London), most barristers are used to travelling to appear at court, so you are not necessarily limited to choosing someone who is based locally. If the work required is paperwork-based, you can broaden your choice by looking in one of the major centres, such as London, Birmingham, Leeds, Manchester, Bristol and Cardiff.

Barristers invariably quote their year of call - the year in which they qualified as a barrister - as a measure of experience. Therefore more years of call is likely to mean more experience and hence a higher fee. However, this is not a hard and fast rule.

Queen's Counsel (QC or "silk") are senior barristers who have been appointed as such by the Lord Chancellor. QCs tend to charge higher fees than other barristers (who are collectively referred to as "juniors" or "junior counsel", no matter how many years of call).

Thus the three factors likely to influence your choice of barrister are:

- Their area of practice.
- Their level of experience (which is likely to dictate their cost).
- Where relevant, their location.

Barristers' clerks are used to helping solicitors find the right barrister and can do the same for public access clients. Often a public access client will identify a particular chambers, perhaps by a web search or word of mouth, and contact its clerks by telephone or email to find out who is available and to get a quote for the work required.

HOW TO INSTRUCT A BARRISTER

Barristers operate on a piecework basis. In contrast to solicitors, who will generally take on a case and run it from start to finish, barristers tend to be engaged to do particular pieces of work. This might typically include representation at court, drafting official documents, giving advice in writing or in conference (a private meeting between barrister and client), sending letters and acting for clients in negotiations.

There are three key components to instructing a barrister:

- **Identify what work you want the barrister to do.** Examples of the sort of work barristers do are given above. However, this is not an exhaustive list. You can find a barrister to do just about anything that falls under the broad umbrella of legal services.
- **Provide the barrister with the necessary information.** This is usually done by sending what is often referred to as instructions to counsel, which sets out in summary form the relevant background and is accompanied by the necessary documents. (For guidance, see [Standard document, Instructions or brief to counsel \(with drafting notes\)](#) and [Standard document, Instructions or brief to counsel \(covering letter\)](#). Whilst these resources are aimed at solicitors, with the appropriate adaptations they can be used as a guide by public access clients.)
- **Agree a fee.** Sometimes the barristers' clerk will agree the fee; sometimes the barrister will do it themselves. Barristers' hourly rates vary enormously depending on level of seniority and the complexity of the work involved. They can be as low as £75-100 per hour for a very junior barrister to £500 plus for a QC. However, it is often possible to get a barrister to quote a fixed fee.

For further guidance see [Box, Tips for good instructions](#).

FORMAL REQUIREMENTS

The client care letter

It is possible for a barrister to agree to accept instructions to carry out all of the work required to take a case to trial on a public access basis. However, almost always, public access instructions will be accepted by the barrister on a

piecework basis, as noted above. In other words, the barrister will be instructed to carry out specific pieces of work from time to time by the lay client. Each piece of work will be set out in a client care letter. This has two functions:

- It serves as the contract between the barrister and the lay client.
- It also includes the information required by Rule C125 of the Public Access Rules, such as details of the barrister's complaints procedure and a warning of the circumstances in which the barrister might have to withdraw from the case.

In most circumstances, therefore, the barrister and the client will enter into a contract at each stage of the case where the involvement of the barrister is required. In practice this will mean a fresh client care letter for each piece of work. The remainder of the terms of the contract will almost certainly remain identical. Where subsequent instructions are received, it is permissible for the barrister to satisfy the notification requirements under Rule C125 by setting out work that is to be done and the fee, then referring to the previous client care letter for the remaining terms and conditions.

The Bar Standards Board has published model client care letters for both standard public access cases and cases in which the instruction is via an intermediary. It is permissible for the model letter to be amended so long as the requirements of Rule C125 are still met. Many chambers and individual barristers have created bespoke templates. The Bar Council has recently issued guidance, prepared for the Bar Council by the authors of this note, on drafting bespoke client care letters:

http://www.barcouncil.org.uk/media/549590/client_care_letters_in_public_access_cases.pdf.

The client and the barrister should agree not only the fee for the work but terms as to payment. Unlike a solicitor, a barrister is prohibited from holding client money (Rule C73 of the Code of Conduct). This means that, unlike a solicitor, a barrister cannot ask for a sum of money up front to be held on account of potential future work.

It is possible for the barrister and client to agree to an hourly rate, with fees paid after the event. However, there are downsides for both barrister and client to such an arrangement. The client is entering into a potentially open-ended obligation. The barrister is unable to receive fees in advance, as they are unable to hold client money, and therefore risk the client defaulting on payment.

Most public access instructions are on a fixed-fee basis. This provides certainty for the client and allows the barrister to receive the fee up front without breaching the client money rules. Such an arrangement allows a negotiated fee for a specific piece of work, and works well in most situations. However, it is potentially problematic in multi-day cases. When instructed by a solicitor, a barrister will typically agree a fee arrangement for multi-day hearings consisting of a brief fee to cover preparation and first day, and refresher fees for each subsequent day. Thus a seven day case where the brief fee is £4,000 and the refreshers are £1,000 gives a total liability to pay fees of £10,000 if the case takes the full 7 days. If the case takes less time, the client pays £1,000 less per day. A fixed fee of £10,000 for up to 7 days may not appear to be such good value if the case settles on day two.

There are two methods of dealing with this issue which still enable the barrister to have their fees in advance:

- **Day-to-day instruction.** The barrister and client agree a fee for each day payable in advance. For example, at the end of day one of the hearing the client will put the barrister in funds for day two; and at the end of day two for day three; and so on until the case concludes. This method provides protection to the client from an excessive bill in the event that a long case goes short, but still allows the barrister to receive the fee up front. If the client does not pay, they risk the barrister not turning up the next day.
- **Use of an escrow account.** An example is BarCo, which is operated by the Bar Council. Escrow accounts allow the money to be paid held in escrow, so the barrister is not holding the client's money, but has security for the same. BarCo will release funds on request by the barrister after giving the client five days to object. In the event of an objection the money will be frozen pending resolution of any dispute. The Bar Standards Board

Handbook allows for third party escrow accounts to be used but these must comply with the provisions of the Handbook. BarCo is compliant.

Money laundering and proceeds of crime requirements

Public Access barristers should be aware of the prospect of the engagement of the Money Laundering Regulations and the Proceeds of Crime Act (POCA). Detailed guidance is available from the Bar Council. Public access barristers cannot rely upon checks carried out by solicitors, because there is no solicitor involved, so must be aware of when the regulations apply to them. The Money Laundering Regulations are likely to apply only to those barristers in self-employed practice who are involved at the planning or execution stage in transactions involving the buying or selling of real property or business entities, or the creation, operation or management of trusts, companies or similar structures. In any event, if the barrister is involved in the ordinary conduct of litigation (court or similar proceedings; the phrase is distinct from the conducting of litigation under the Legal Services Act 2007) neither the regulations nor the provisions of POCA will apply: *Bowman v Fels* [2005] EWCA Civ 226. However, advising in conference prior to such litigation, or the drafting of a pre-nuptial agreement or a settlement agreement for a company, might engage the regulations. Barristers may therefore require proof of identification (for example, in the case of an individual, a photo driving licence or passport and a recent utility bill). In some circumstances, barristers may be obliged to make an authorised disclosure under Section 337 of POCA before accepting instructions.

Other regulatory requirements

- **Provision of Service Regulations 2009.** These regulations require a barrister to make available to their client certain information, such as their insurance details and VAT number. This information can be included in the client care letter or posted on the chambers' website.
- **Consumer Contract Regulations 2013.** These regulations give consumers a right to cancel the contract within a 14 day 'cooling-off' period in certain situations, particularly where contracts are made over the internet or by email. If the regulations apply, the barrister will inform their lay client in the client care letter of their rights of cancellation. Note, however, that these regulations only apply to individuals acting as consumers; they do not apply to business or commercial clients. For further information see [Practice note, Consumer Contract Regulations 2013: overview and scope](#).

Code of Conduct requirements

In addition to the matters discussed above, a barrister must comply with their Code of Conduct (and, indeed, must state in their client care letters that they are obliged to do so). Of particular importance in a public access case are the following requirements in the Code:

- **Contract.** In all cases, a barrister must confirm in writing the terms or basis on which they are acting. In a public access case, this is done by sending a client care letter.
- **Client money.** Save for receiving payment of their fees, barristers are prohibited from handling or receiving money from their clients.
- **Withdrawal.** Rules C25 and C26 set out the circumstances in which a barrister can withdraw from a case. These include, for example, where their professional commitments clash, or ill health. Note that these provisions only apply if the barrister has accepted the instruction. Simply declining to take on a case is not the same as withdrawing from it.
- **Conducting litigation.** Only barristers with special authorisation from the Bar Council may conduct litigation
- **"Outsourcing".** The barrister will generally do all of the work on the case. If the barrister wants to engage a third party to assist them to carry out their services, such as a paralegal or litigation assistant, they will normally have to obtain their client's agreement. These arrangements are known as "outsourcing".

- **Insurance.** Barristers must be members of the Bar Mutual Indemnity Fund.

Complaints

All barristers must have a written complaints procedure, details of which will be set out in the client care letter. A dissatisfied client must first go through the barrister's internal chambers' complaints procedure. Some clients, if they are not happy with the outcome of that process, can then take their complaint to the Legal Ombudsman. However, most businesses are excluded from the Legal Ombudsman scheme.

A TYPICAL CASE?

There is no such thing as a typical legal case and therefore no such thing as a typical public access case. However the following, based on a real example, gives an idea as to how public access works in practice.

Henna & Co, an accountancy firm, are having a problem with a former senior account manager, Mr Slipp. He left without serving out his notice and has set up in competition only a few miles away. Some of Henna's clients have reported that Slipp has been trying to poach them.

Mr Henna decides to take advice from a public access barrister. He does a Google search for the terms "public access barrister" and "contract" and "restrictive covenant". He identifies a chambers that seem to have barristers who deal with these issues. He sends them an email, giving a summary of the problem and attaching relevant documents including Slipp's contract of employment and some email traffic he found in Slipp's outbox.

The chambers' clerk contacts him and suggests three barristers. Mr Henna chooses Mr Rampole, a barrister of 12 years' call who will charge £850 plus VAT to give an initial advice in conference based on the information that has been supplied. Mr Henna is pleased with the way the conference has gone, so he instructs Mr Rampole to send a letter of claim in accordance with the pre-action protocol.

Unfortunately that letter produces an abusive response from Mr Slipp. Henna & Co go back to Mr Rampole who recommends issuing proceedings and making an application for an injunction. Mr Rampole drafts the necessary paperwork but, because he is not authorised to conduct litigation, he passes it to Henna & Co to issue it in the High Court.

At the injunction hearing Mr Slipp is represented by a barrister and a solicitor. Mr Rampole goes to speak to them and they offer to give an undertaking that Mr Slipp will not contact any of Henna & Co's client pending trial. Mr Henna is content with this.

The case progresses and Mr Henna deals with the correspondence from the court and the other side as well as collecting statements from the relevant clients. He fills in the allocation questionnaire himself though he seeks help from Mr Rampole on a couple of points. Mr Rampole represents the firm at a case management hearing at which the court sets out directions to take the case through to trial. Mr Henna diarises the dates and sets about dealing with disclosure, exchange of evidence and preparation of a trial bundle.

Shortly before the case is due for trial, Mr Slipp's solicitor sends Henna & Co a Part 36 offer of settlement. Mr Henna arranges for a further conference with Mr Rampole to discuss it. It is clear that Mr Slipp is worried about his position and is trying to extricate himself from the litigation with the minimum possible damage. Mr Rampole suggests they make a counter-offer which, after some prevarication, is accepted by Mr Slipp.

Mr Slipp's solicitor draws up a consent order. Mr Henna gets Mr Rampole to look it over before he lodges it at court. The case settles before trial.

WHAT IS “CONDUCTING LITIGATION”?

The definition of the conduct of litigation is not clear. It is found in schedule 2 of the Legal Services Act 2007 and is as follows:

- the issuing of proceedings before any court in England and Wales;
- the commencement, prosecution and defence of such proceedings; and /or
- the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).

The concept of the conduct of litigation has been noted by the Court of Appeal in the leading case of *Agassi v Robinson* [2005] EWCA Civ 1507 to be “a difficult area”. The Court of Appeal held that “ancillary functions” was confined to “formal steps required in the conduct of litigation” but considered it not necessary to decide precise parameters of the phrase. However, the court commented that “[i]t is unfortunate that this important definition is so unclear”.

The Bar Standard Board’s Guidance for Public Access Barristers gives guidance on what does and does not fall within the concept of the conduct of litigation. It takes the view that the following would amount to the conduct of litigation and that a barrister instructed on a public access basis should not (subject to having authorisation to conduct litigation) undertake them:

- Issuing proceedings or applications.
- Giving their address as the address for service (often referred to as “going on the court record”).
- Acknowledging service of proceedings.
- Filing documents at court or serving documents on another party. (Although this is not further defined by the Bar Standards Board it is likely to include filing a defence, serving a list of documents, exchanging witness statements and serving an expert’s report).
- Issuing notices of appeal.

However, there are a number of steps which, in the view of the Bar Standards Board, barristers can carry out despite them having the feel of conducting litigation. These include:

- Lodging certain types of document, such as chronologies, case summaries, skeleton arguments and lists of authorities.
- Liaising with the court to discharge a duty or courtesy, or as to the terms of an order.
- Fixing court dates.
- Signing a statement of truth.

The rationale is that these are steps that barristers either do carry out commonly when instructed by a solicitor, or are expressly permitted to carry out by the Civil Procedure Rules (CPR).

The definition of conducting litigation relates to proceedings before any court. It follows that steps prior to proceedings before court proceedings have been instigated (for example pre-action correspondence including as letters before action) do not amount to the conduct of litigation. Further, proceedings before a body that does not fall within the definition of court are not caught by the definition, for example professional disciplinary bodies and employment tribunals. However, it should be noted that some tribunals, such as the Upper Tribunal, do fall within the definition of “court”.

CAN A BARRISTER REFUSE TO TAKE ON A PUBLIC ACCESS CASE?

Yes. A barrister must always act in the client's best interests. Therefore they must refuse to accept instructions if they consider they do not have sufficient competence or experience to handle the matter.

Some cases may simply not be suitable for public access instruction. This may be because the lay client is not able to deal with the conduct of the litigation due to the nature of the case. An action that is likely to involve regular correspondence or large disclosure exercises might be more appropriate for the instruction of a solicitor. Cases which require extensive investigation of evidence, such as taking statements from witnesses or instructing experts, might likewise best be done through a solicitor, though barristers are permitted to investigate and collect evidence. If the barrister considers that the client would be better served by engaging a solicitor then they cannot accept instructions directly from the client.

Barristers are also required to consider whether their client is vulnerable and, if so, whether any additional measures are required. The Bar Standards Board's Guidance for Public Access Barristers gives various examples of potential vulnerability, which include gender, age, race, lack of English and physical or mental disabilities. It is the duty of the barrister when considering accepting public access instructions to consider whether the best interests of the prospective client in light of any given vulnerability are best served by their instructing a solicitor rather than the barrister directly.

Finally, but most importantly, the "cab rank rule" does not apply to direct instructions. It only applies to instructions from a professional client, such as an instructing solicitor. Thus a barrister can refuse to accept instructions on a public access basis, even from a client they have acted for previously. A barrister is not required to give reasons for refusing to accept instructions, though they must ensure that reason for refusing those instructions is not discriminatory or otherwise in breach of the Code of Conduct.

TIPS FOR GOOD INSTRUCTIONS

- **Keep the “brief” brief.** Your barrister will read all the relevant documents. Therefore there is no need to rehearse at length in your instructions to counsel (brief) what is in the documents. A short summary of the pertinent facts will usually suffice. It can also be helpful to identify the key issues in the case, not least because that will focus your mind on providing the relevant documents (see below).
- **But not too brief.** Sometimes key facts may not be apparent from the documents, for example, evidence that a witness can give about what they saw or heard. The instructions should include any pertinent information which cannot be ascertained from the accompanying documents.
- **Identify the relevant documents.** Barristers by training and experience base their assessment of a case on the documents with which they are provided. Failing to include an important document could have serious consequences. On the other hand, providing your barrister with unnecessary information may only serve to increase cost. Identifying the issues in the case is likely to help to identify the relevant documents.
- **Types of documents.** Documents often included with instructions are: court documents (for example, claim forms, defences, application notices, court orders); contemporaneous documents (for example, contracts, plans, photographs); correspondence (for example, emails and letters between the parties); experts’ reports and statements from witnesses. For legal purposes, a document includes any medium which can store information, so is by no means limited to paper documents. However, many barristers are by tradition more comfortable with copy documents. They do not have the same facilities for safe storage of original documents that solicitors have. Therefore it is usual to provide the barrister with copies and retain the originals yourself.
- **Set out clearly what work you require.** Think about the scope of the instruction. For example, if you are instructing a barrister to represent you at a hearing, do you also want to have a meeting with them (a “conference”) beforehand? Do you want them to draft the skeleton argument or prepare the bundle? Are there any deadlines involved? What questions or issues do you want the advice or conference to cover? Do you want to see the draft of a document before it is finalised? A useful exercise is to conclude the brief with a numbered list of points that you want the barrister to deal with. Keep it focussed, because the longer the list, the higher the fee is likely to be.
- **Witness statements.** A lot of contested cases turn on the evidence of witnesses. However, the importance of providing statements from witnesses is often overlooked by public access clients (and indeed some solicitors). Whilst it is not essential that the statement be in a particular format, it is essential that all the important evidence is provided to your barrister so they can give you the best advice. (For guidance see [Practice note, Preparing effective witness statements](#), [Checklist for preparing witness statements for use at trial](#) and [Standard document, Letter to witness about preparing their witness statement](#). Whilst these resources are aimed at solicitors, with the appropriate adaptations they can be used as a guide by public access clients.)