



Public Access to the Bar:
5 Years of Success

Foreword



“The ability to instruct a barrister directly has enabled many litigants who would otherwise be unrepresented to obtain specialist legal advice and representation efficiently and at reasonable cost.”

In the 5 years since the Public Access scheme was introduced in 2004 it has become increasingly significant as a method of obtaining legal services. The Bar Council’s Public Access directory now boasts over 1,100 barristers undertaking a wide range of civil work. Following the Bar Standards Board’s Review of the Public Access Rules, the scope of permitted work is being extended further to include family, crime and immigration.

The potential benefits of Public Access to the consumer are now being recognised by many organisations and business people, as well as by members of the general public. Users of the scheme report that barristers instructed directly are approachable and deliver a high quality service. In the right circumstances a Public Access barrister can represent a client in court. Naturally, those who go directly to a barrister have more control over their case, and very often save money.

The individual stories in this booklet are therefore timely, and provide invaluable illustrations of how the scheme actually works in practice. They include examples of:

- barristers undertaking categories of work which solicitors commonly refer to counsel in any event;
- barristers running cases all the way to trial from start to finish, with the client acting, in effect, as litigant in person for solicitor functions;
- cases in which, without Public Access, the client would have been denied access to justice by not being able to pursue a claim;
- cases in which the ability to instruct counsel directly has been instrumental in securing a speedy outcome; and
- frequent litigants using Public Access on a regular basis to cover the legal aspects of their business.

The ability to instruct a barrister directly has enabled many litigants who would otherwise be unrepresented to obtain specialist legal advice and representation efficiently and at reasonable cost.

It is my belief that the range of work covered in this booklet is testament to the success of the Public Access scheme. Whether you are a litigant looking to instruct a barrister under the scheme, or an interested observer, the case studies you will read about are bound to enhance your understanding of the process.

Desmond Browne

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Chairman of the Bar



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The Bar Council would like to thank the many barristers and clients who contributed to the production of this publication. Particular thanks are extended to Lisa Clarke and Kate Livesey who jointly managed the project.

Straight to the point: a direct route to specialist advice



For those needing advice on a specialised area or point of law of a sort which solicitors are likely to refer to specialist counsel in any event, instructing a barrister directly presents a “cost effective shortcut”. Likewise, there is no longer any need for clients who know at the outset that they wish to consult a barrister to go to the additional cost of instructing counsel through a solicitor.

Counsel can and will advise if and when the involvement of solicitors becomes necessary; at that point counsel is well placed to advise the client what services are required from the solicitors and to recommend a suitable firm.

CASE 1 – Intellectual Property dispute

This is an example of a case in which a barrister instructed directly under the Public Access scheme provided advice and assistance at the pre-action stage in an intellectual property dispute. However, there came a point in the final stages of the dispute when the barrister recommended that the client brought in solicitors to assist with work that fell outside the scope of the Public Access scheme.

A small company involved in producing innovative textile designs required help in preventing its designs being plagiarised by both a large supermarket store and a carpet company. Both potential defendants had simply ignored letters of protest written by the client itself.

Under direct instructions from the client, Counsel provided specialist advice on the client’s prospects of success against both potential defendants and drafted correspondence.

On Counsel’s advice, the client then instructed solicitors whom counsel recommended should carry out a defined scope of work. Reasonable settlement offers were then made by the companies concerned which enabled the client to compromise its claims without issuing proceedings.

Counsel was then able to continue advising the client on a Public Access basis how the company could best protect its designs in the future as well as assisting the client to put together an appropriate template for a contract to be used with future customers.

The barrister comments: *“The client was finding that going to solicitors who were affordable meant going to solicitors who did not have specialised knowledge in the field of intellectual property, particularly copyright. They in turn would simply instruct Intellectual Property Counsel. Public Access removed the middleman without any risk of prejudice to the client. The real dispute was on quantum and that required specialist counsel advice. The service that I provided with some assistance from instructing solicitors was achieved at a very affordable rate for an IP dispute which meant that the all-in monetary offer left a lot for the client.*

The client says: *“It [Public Access] gave me quick access to up-to-date relevant advice from someone who had the practical first hand experience and knowledge on how a case like mine would work in the court. The result of this was a cost effective short cut that led to a successful compensation to me for the copying and plagiarism of my designs. Previous non direct routes have proved lengthy and expensive and unsuccessful.”*

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“I found the barrister to be extremely helpful, knowledgeable and professional throughout.”

CASE 2 – Licensing (non-contentious)

A small company providing out-of-hours medical services needed to obtain a licence to use premium rate telephone numbers. It instructed a Public Access barrister to draft the documents needed to obtain the licence and to advise on compliance with the ICSTIS and Ofcom Codes of Practice and Regulations.

The client says: *“I wanted access to a barrister without incurring the unnecessary costs of a solicitor. I found the barrister’s details by searching the Bar Council’s website and putting in a search for a barrister with licensing experience. I found the barrister to be extremely helpful, knowledgeable and professional throughout. I particularly liked the ease in instructing a barrister through the Public Access scheme and the costs that I inevitably saved in being able to instruct a barrister direct.”*

“I particularly liked the ease in instructing a barrister through the Public Access scheme and the costs that I inevitably saved in being able to instruct a barrister direct.”



Making the most of clients' existing resources



Public Access is particularly suited to companies and public bodies that have in-house resources such as administrative support. They may also have staff familiar with the issues who have sufficient time to provide information and assistance to counsel. Such organisations are able to instruct counsel directly without incurring the cost of instructing solicitors.

The following are examples of a City Council and a company using the scheme to obtain legal services quickly and cost effectively.

CASE 3 – Local Government dispute

This City Council obtained advice and representation directly from their barrister (from the pre-litigation stage right through to final hearing) in judicial review proceedings. The case concerned the powers of a parish meeting to discuss parish affairs and demand a poll on a question arising out of the meeting. The Council ultimately succeeded against an opponent with considerable legal resources and financial backing.

The barrister comments: *“The case was a success because the Council and I were able to work very closely and very flexibly. There were complex matters of law but the Council had a very sound understanding of the issues and was able to provide quick and meaningful instructions in respect of particular issues. I think the Council and I were very lucky that we could speak to one another directly. That almost certainly saved time and reduced the scope for confusion.”*

The Council recommends the scheme to others: *“Public Access proved to be an extremely cost effective way of managing the case. We were able to get very quick responses, Council staff could support Counsel in house which reduced costs, and direct contact with Counsel allowed complex issues to be dealt with easily. We were fortunate in our choice of Counsel who was excellent. He enabled us to communicate the progress of the case to elected members speedily and efficiently. The Council was very satisfied with the Public Access service, would have no hesitation in recommending it to similar bodies and extends an invitation to other bodies to approach us for a testimonial.”*

“Council staff could support Counsel in house which reduced costs, and direct contact with Counsel allowed complex issues to be dealt with easily.”



CASE 4 – Construction dispute

The client in this case was a limited company providing facilities and care for Multiple Sclerosis sufferers. It found itself defending an over-stated claim for professional fees by the project manager of a new treatment facility constructed for the company.

The company had limited funds and was having to raise its litigation funds from donors. The company instructed counsel directly to draft a Defence and Counterclaim, to advise on correspondence including a settlement offer, to attend interim hearings and to represent the company at a 9-day County Court trial.

Counsel comments that the client had limited funds and was unlikely to have been able to afford to instruct both solicitors and counsel but that, *“there were very committed personnel in the client company who were prepared to take on the burden of drafting witness statements, writing letters and other case preparation work”*.

Although the claimant recovered a small amount on his claim, it was less than the client had already offered him in settlement and the company recovered a substantial sum in costs.

The client says: *“The service on Public Access to the Bar was excellent. The skills of our Barrister were second to none – “Superb”. In a more technical case than ours a solicitor would be required in order to prepare the information. However, whether a solicitor would be needed would depend on the skills and competence of the client.”*

“The service on Public Access to the Bar was excellent.”

A comprehensive service

These 2 cases demonstrate that, in an appropriate case, Public Access can provide a comprehensive service to litigants who wish to dedicate their own time to assisting Counsel in order to save costs.



CASE 5 – Landlord and Tenant dispute

In this case the client used the Public Access scheme from the start to the finish of litigation: counsel drafted statements of case, assisted the client in the trial preparation period and represented the client at trial, advising and supporting the client throughout and ultimately achieving a successful outcome.

The case concerned a dispute as to whether the tenants in individual residential flats were entitled collectively to purchase the headlease from their landlord. It involved complex legal argument as to how the relevant statutory law should be interpreted and whether certain notices served by the tenants were valid.

The tenants, through the management company they formed to purchase the headlease, used the Public Access scheme to instruct their barrister directly. *“Finding a Public Access barrister was quite straightforward”* comments one of the tenants. *“We simply logged on to the Bar Council’s website and used the search parameters of ‘Public Access’ and ‘Landlord and Tenant’.”*

Following a full trial, including oral evidence and submissions, the tenants were successful in obtaining an order that the landlord transfer the headlease to the management company and pay the tenants’ costs of the proceedings.

This was a case in which it was highly probable that the tenants would not have pursued their case had they not had the option to instruct counsel directly and save costs by opting to carry out the solicitor functions themselves, ‘in person’. In the event, the tenants were successful and recovered their costs. However, in choosing to use the Public Access scheme at the outset, a prime consideration for the tenants had been to minimise their own litigation costs (i) to ensure that they would be able to continue to fund the case to trial and (ii) in case a successful outcome could not be achieved and costs recovered. In the words of one of the tenants who was the primary contact point for counsel: *“If Public Access had not existed, we might very well have abandoned our cause and given up our search for justice. The costs of litigation were undoubtedly greatly reduced. We estimated that our legal costs would probably have doubled if we had instructed a solicitor. But at the same time, by choosing Public Access, we also minimised our financial exposure in the event that we lost the case. So, from a cost point of view, Public Access was the right approach for us, no matter what the outcome. This was absolutely the right route for us to take, and we would definitely make the same choice again. Anything that improves the accessibility of justice must be a good thing.”*

Key to the success of the proceedings was that, to save costs, the tenants themselves were able and prepared to devote time to providing instructions to Counsel and, with Counsel’s guidance, to take the responsibility for case preparation tasks that would ordinarily be carried out by a solicitor:

“Direct Access is the ideal path to follow provided you have a good grasp of the details of your case and some spare time. Getting to grips with Court procedure can be a challenge, but the rewards are not only substantial savings in solicitor’s fees, but also better, clearer and more direct communication with your barrister.”

“This was absolutely the right route for us to take, and we would definitely make the same choice again. Anything that improves the accessibility of justice must be a good thing.”

CASE 6 – Commercial Arbitration Appeal under the Arbitration Act 1996

A small software company became embroiled in a protracted contractual dispute with a client, an inter-governmental organisation based in London. The dispute was referred to arbitration in 2003. The company was represented in the arbitration by a large firm of city solicitors and a senior junior counsel. Two years later, after a 10 day arbitration hearing in London, the arbitral Tribunal decided against the company.

In May 2005, still represented by both solicitors and counsel, the company issued appeals to the Commercial Court under the Arbitration Act 1996 against the Tribunal's decision, challenging the independence of the Tribunal and the correctness of its decision in law. When its opponent appointed a Queen's Counsel, the company did the same. At a preliminary hearing, the Commercial Court dismissed the company's appeal on a point of law, leaving the company to continue its challenge to the Tribunal's independence.

Faced then with funding both (i) Court of Appeal proceedings to appeal the Commercial Court's decision to dismiss the company's appeal on a point of law and (ii) the continuation of its challenge to the Tribunal's independence in the Commercial Court, the company opted to carry out the solicitor function itself and to instruct leading and junior counsel under the Public Access scheme.

On direct instructions from the company, Counsel:

- represented the company at a 3 day Court of Appeal hearing of its appeal on a point of law;
- advised upon and helped the client to prepare the company's independence challenge;
- amended the company's grounds of challenge to include a jurisdictional challenge to the Tribunal based on defects in the appointment of the arbitrators;
- represented the company in its jurisdictional and independence challenges both in the Commercial Court and then in the Court of Appeal.

At the end of 2008, after a succession of hearings generating several reported judgments, the company finally succeeded in having the Tribunal's decision overturned on the basis of its jurisdictional challenge and obtained an order for recovery of its costs of the arbitration proceedings.

The client says: *"The appeal raised novel points of law and was not capable of quick resolution. When we instructed counsel under the Public Access scheme, we had already been funding this dispute for four years. Additionally the smaller law firms did not*



"Public Access ultimately enabled the company to see the proceedings through to a successful conclusion economically and with less risk."

have the expertise in this specialised area. Having direct contact with counsel I felt I had more transparency, a clearer idea of the weaknesses of our case and an opportunity to brainstorm. This reduced the stress of litigation. It was a privilege to work first hand with such talented counsel and to understand their way of looking at issues. Although the solicitor tasks that I had to do largely by myself were time-consuming, this ultimately enabled the company to see the proceedings through to a successful conclusion economically and with less risk."

Forging long-term relationships



“Public Access represents excellent value for money...”

The following 2 cases demonstrate the use of Public Access on a repeat basis by clients frequently exposed to property litigation. In these cases, a property development company and a residents’ association have found the scheme a convenient means of obtaining quick and effective advice and representation on planning matters.

CASE 7 – Planning disputes

One property development company, well-experienced in using the services of solicitors and counsel, has sought advice and representation directly from counsel in relation to a number of planning appeals associated with its proposed residential developments.

The company has involved its Public Access barrister, in conjunction with other specialists and professionals, from the very outset of the development process so as to identify potential issues and tactics at an early stage.

Services provided by Counsel include advice on issues and tactics at the site feasibility stage, at the stage of submitting applications for planning consent and throughout the planning process; preparing and representing the company at planning appeals; and, at the post-consent stage, drafting planning agreements and advising on the wording of planning conditions.

“The client is a very experienced businessman and developer,” comments the barrister. “He is used to working with solicitors but found the direct and immediate contact that Public Access provides to be more useful to him. It allows him to keep greater control of his professional resources and therefore a tighter rein on costs; something that is especially important in a period of recession when development costs are not falling.”

The client says: *“I see no point in paying twice for something so Public Access represents excellent value for money when it comes to using legal professionals. I have solicitors when I need them for general matters. I know in advance what using counsel will cost me on an hourly basis and so I ensure I only use him when I need to and I do so efficiently. He makes himself readily available by ‘phone and email. There is no delay in having to reach him through someone else and as he responds directly to me I have immediate answers that are not filtered through someone else. This is very convenient and obviously a great advantage in business.*

Counsel picks things up very quickly and gives decisive advice taking into account commercial reality. I do not feel that the taximeter is just running for its own sake and I do not feel that I get charged for every minute of every discussion or email. I feel I get effective added value from his input and he is not afraid to lead from the front. Even though we have worked together for a number of years now on many projects, he won’t simply be a “Yes man” but will advise me with appropriate firmness when necessary. By using him, in conjunction with my other professionals, I can reduce the uncertainty in a business full of unknowns.”



CASE 8 – Planning disputes

A Residents Association and lobby group concerned with the impact of concentrations of houses in multiple occupation (HMOs) has referred three separate planning matters directly to counsel and intends to continue to use the Public Access scheme in the future.

Work undertaken for the association by 2 barristers includes: assisting and representing the association in a government consultation process; providing a written advice to the association for disclosure to a City Council with a view to preventing the granting of inappropriate planning permissions (the Council having previously refused to act on representations made by the association without legal representation); and advising and assisting the association in the preparation of its presentations to be made at planning appeals.

The association comments: *“There is no question this has been the easiest, most effective, efficient and indeed, happy experience and we now have established a valuable relationship with the barristers’ chambers which we really appreciate. After all, the shortest distance between two points (clients) is always a straight line, where possible”.*

In relation to one of the matters referred to counsel, the association continues, *“It would not have been possible to obtain the support needed in time unless we had been able to make immediate and direct contact. This is a far more practical way of working – more Direct Access please!”*

“There is no question this has been the easiest, most effective, efficient and indeed, happy experience and we now have established a valuable relationship with the barristers’ chambers which we really appreciate.”

Access to representation means access to justice

For some litigants, the existence of the Public Access scheme has meant the difference between being able to pursue their cases with representation and being forced either to abandon them for lack of sufficient funding to instruct both solicitors and counsel or to continue them as 'litigants-in-person'. The following 2 cases are examples how Public Access can enable litigants to see their cases through to a successful conclusion.

CASE 9 – Professional Negligence dispute

The Public Access client was an individual who had lost his restaurant business after his solicitor failed to serve a notice under the Landlord and Tenant Act 1954 in relation to the property from which the restaurant was trading. He wished to sue his solicitor claiming damages for professional negligence.

Prior to instructing a barrister via the Public Access scheme, the client had already referred the dispute to 3 firms of solicitors without obtaining a result. Counsel observes *"The client had lost faith with solicitors due to the facts of the case. There were also difficult questions of quantum of damages that required the input of Counsel."*

The client could not afford to instruct legal representation other than on the basis of a conditional fee ("no win-no fee") agreement.

Acting under a conditional fee agreement, the Public Access barrister advised, settled statements of case, drafted correspondence and represented the client at a preliminary court hearing. The client was then able to negotiate a settlement of his case, obtaining a sum in damages from the defendant and his costs.

The client says. *"I could not have afforded to pursue my claim without using the Public Access scheme. Without Public Access I would not have had access to justice because I needed to instruct representation on a conditional fee basis and solicitors had refused to work for me on Conditional Fee Agreements due to what they perceived to be complications with the case. I'd previously used 3 solicitors firms but none had obtained a result for me. I was very pleased with the service provided by my barrister."*

"Without Public Access I would not have had access to justice..."



CASE 10 – Employment dispute

The client was a successful recruitment consultant who was in dispute with his employer, a recruitment consultancy firm. The client suffered from depression, acute stress and anxiety. Although some accommodations were made by his employer he believed that the ongoing actions of his employer were designed to try to force him out of his employment and consequently he resigned claiming constructive dismissal and disability discrimination.

The client initially went to a medium sized firm of city solicitors, who handled his internal statutory grievance procedures but by the end of this process he had incurred costs of over £25,000. He then instructed a barrister directly. She gave him initial advice on the merits of his claim, drafted proceedings for the Employment Tribunal, attended a case management conference and a mediation, and conducted further negotiations following the unsuccessful mediation. Ultimately a substantial negotiated settlement was achieved for the client.

The client, who says costs already incurred during the statutory grievance procedure prior to instructing Public Access counsel very nearly prevented him from even being able to get his case to court, comments: *“Direct Public Access was perfect for me. I absolutely wish I had engaged my Barrister via Public Access from the very outset of my case. Public Access enabled me to access what I consider to be much more pertinent advice at a much more affordable rate. The barrister cut to the chase: her advice was much more succinct and direct. I got the feeling that I was getting literally 50 x better value for what little money I had. What was a very upsetting and stressful time for me was made somewhat less stressful by being able to deal with a barrister in this way. I really can only stress again I wish I had taken this route (or been advised to take this route) from the outset.”*

“What was a very upsetting and stressful time for me was made somewhat less stressful by being able to deal with a barrister in this way.”



Increased speed and efficiency



Quite apart from the likely cost advantages of being able to instruct barristers directly, clients report additional benefits in terms of the greater efficiency and speed of obtaining results. Speed was of the essence in the following case involving the obtaining of an interim injunction in the High Court.

CASE 11 – Contractual dispute requiring urgent interim relief

The Public Access client was a Championship League Rugby Club that benefited from an agreement with a local premiership football club entitling it to play its 2009/2010 season matches on the football club's ground. Following a change in ownership of the ground, the football club served the Rugby Club with notice to terminate the agreement at short notice. The Rugby Club needed to act quickly to obtain an injunction to ensure that there was no disruption to its scheduled matches, in particular a forthcoming pre-season friendly match. The Rugby Club's immediate need was therefore not for representation by solicitors but for access to a barrister to advise and present their case for an interim injunction in court.

The Rugby Club chose to instruct a barrister under the Public Access scheme in order to save the initial expense of instructing solicitors and to secure speedy action and an expeditious court hearing. Following an initial conference, Counsel drafted the application for an injunction and associated court documentation and went on to prepare the legal argument and represent the Rugby Club at the court hearing of its application. The Rugby Club was thereby able to obtain a mandatory injunction in the High Court at a day's notice compelling the football club to permit the Rugby Club to play its pre-season friendly match at the ground without disruption.

The client says *"We needed to act very quickly and Public Access gave speedy access to high quality expertise. Initial meetings were extremely productive and advice concise and immediate. We appreciated the early access to our barrister and communication from him was clear and constructive. We feel we saved both time and expense associated with more traditional route via solicitors and were all very happy with the service and obviously the outcome."*

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Further sources of information

The Bar Council

The Bar Council's website at www.barcouncil.org.uk has a list of barristers who can be instructed directly complete with their areas of practice and full contact details.

The list is searchable by name, by area of practice and geographically. From the menu on the home page, choose Find a Barrister and then Public Access Directory.

The website includes guidance for clients. From the Bar Council home page choose Instructing a Barrister, then Public Access, and then Guidance for Lay Clients.

Please feel free to call James Woolf on 020 7611 1313 or email him at jwoolf@barcouncil.org.uk if you have any questions.

The Bar Directory

The Bar Directory, published by Sweet & Maxwell, also has a list of barristers who can be instructed directly. This is at part C of the publication.

The Public Access Bar Association (PABA)

A bar association comprising barristers qualified to undertake Public Access. The website address is www.paba.org.uk.

Other sources

Many chambers' websites include information on their barristers undertaking Public Access work. The Legal 500 (www.legal500.com) and Chambers and Partners (www.chambersandpartners.co.uk) are publications listing recommended barristers and chambers by practice area.

A simple search using an internet search engine will also provide numerous websites that may assist those wishing to find out more about the scheme, including websites for commercial intermediaries whose functions include matching clients to appropriate barristers.

The Bar Council regrets that it cannot recommend individual barristers and does not warrant that the information available on any other website is correct.





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