

Sent by email only to ProfessionalStandards@BarStandardsBoard



4 October 2017

Dear Sir/Madam

Public and Licensed Access Review

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the consultation on changes to the Public and Licensed Access rules.

The Panel has focused and limited its response to the sections that raise consumer issues. We note that the last substantive questions relate to whether or not the scope of the BSB's rules should be amended to allow any client who would not be able to complain to the Legal Ombudsman to instruct any barrister directly (i.e. without using the Public or Licensed Access schemes). The Panel has not addressed these questions at this time; we agree with the BSB that this specific issue should form part of a wider consultation, with additional evidence and analysis.

Answers to consultation questions

Question 1: Do you agree with the conclusion that the status quo should be maintained i.e. that the cab rank rule should not be applied to Public and Licensed Access cases? If not, please state why not.

The Panel would like to start by expressing its full support for the original and historical purpose of the cab rank rule; ensuring that parties to a case obtain representation regardless of the barrister's preference to take the person as a client. As outlined in the BSB's handbook, the cab rank rule obliges a barrister to accept work in an area they say they are competent to practise in, at a court they normally appear at, and at their usual rates, irrespective of the identity of the client and any personal thoughts they may have.

At present, the cab rank rule applies to cases referred to barristers from another lawyer, and not to Public and Licensed Access cases. In reality, the cab rank rule only applies in specific and limited circumstances, because a number of extensive exemptions and exceptions underpins it. If the cab rank rule is extended to Public and Licensed Access cases, these exemptions and exemptions are likely to be transferred, which would in turn affect the practical operation of this rule, much like the status quo. This is an important point because the rule and its practical application ought to be considered in conjunction.

After considering the BSB's measured and evidence based analysis, the Panel agrees that on balance the cab rank rule should not be extended to Public and Licensed Access cases. We acknowledge that there are arguments for applying the cab rank

rule to public access cases for reasons of improving access to justice. Nevertheless, this could be counterproductive, as it could lead to a contraction of the public access sector; barristers may be less inclined to undertake public access work, which would in turn create a barrier to access.

In addition, in coming to a decision, the Panel referred back to the research it jointly commissioned with the Legal Services Board on unbundling legal services.¹ Unbundling is when a package of legal services is separated into tasks between the consumer and legal service provider. The two parties agree which parts of the package the provider will deliver and which tasks the consumer will undertake. In unbundling cases, it is imperative that the solicitor adequately assesses the suitability of the client to ensure good consumer outcomes. This assessment is akin to what a barrister has to do when considering a client's suitability for public access work. Extending the cab rank rule could inadvertently lead to clients attempting to invoke the rule when they are unsuitable for public access and/or their cases have little merit. After considering all the arguments, we therefore agree with the BSB's stance.

Question 2: Do you agree with the proposed changes to the Public Access Rules? In particular, do you agree with the proposals to:

- A. Remove the requirement for barristers who are less than three years standing to maintain a Public Access Log; and**
- B. Require that the written notification given to Public Access clients discloses the level of professional indemnity insurance held by the barrister**

The Panel has consistently stated that legal services professionals and legal services regulators should do more to inform themselves of the consumer voice through consumer research and consumer feedback. The BSB's prescriptive requirement on barristers with less than three years standing to maintain a Public Access log attempts to encourage the collation of such information. The BSB has done well to review this rule, and has identified that it is not working well, in that it is not delivering the desired outcome. This type of evaluation is precisely what the Panel encourages regulators to do.

We agree with the BSB's observation that the rule has been superseded by the BSB's Professional Statement which now places an obligation on all barristers to ask for and make effective use of feedback. We are also re-assured by the BSB's assertion that its Future Bar Training programme will seek to ensure that education and training for the bar reflects the requirements of the Professional Statements. We support the BSB's plans to revisit 'Guidance' on how to gather and make use of feedback (with illustrative examples), and we would strongly suggest that this 'Guidance' is published as proposed.

The requirement for barristers to have Professional Indemnity (PII) Insurance offers protection to barristers and consumers alike. The Panel is in full support of transparency about the level of insurance coverage. We therefore agree with the BSB's proposal that written notification be given to Public Access clients disclosing the level of PII held by the barrister.

¹ The Legal Services Consumer Panel and Legal Services Board, Unbundling legal services, September 2015.

Question 3: Have you identified any further opportunities to simplify or improve the Public Access Rules (at Annex B?) If yes, please explain your answer.

At this time, the Panel has not identified any further opportunities to simplify or improve the Public Access Rules.

Question 4: Do you agree with the proposed changes to the Licensed Access Rules? In particular, do you agree with the proposal to remove references to the Licensed Access Terms of Work? If not, please state why not.

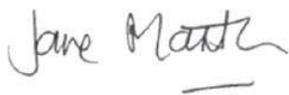
The Panel agrees with the BSB's proposals for the reasons given in the consultation document.

We would be happy to discuss any aspect of this response in further detail. Please contact Lola Bello for further queries at lola.bello@legalservicesconsumerpanel.org.uk.

Yours sincerely

Dr Jane Martin

Chair

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style with a horizontal line underneath the name.