

FALCON CHAMBERS TERMS OF ENGAGEMENT OF COUNSEL BY A MEMBER OF THE RICS

Definitions

1. In these terms:
 - 1.1 “RICS” means the Royal Institution of Chartered Surveyors.
 - 1.2 “Bar Code of Conduct” means the Code of Conduct for the Bar of England and Wales for the time being in force as set out in the Bar Standards Board Handbook as published from time to time.
 - 1.3 “Licensed Access Rules” means the rules in the Bar Code of Conduct governing the acceptance of instructions by barristers from licensed access clients.
 - 1.4 “instructing member” means a member of the RICS from whom a barrister has accepted instructions in accordance with the Licensed Access Rules.
 - 1.5 “Instructions” include a brief save where the context otherwise requires.

Acceptance of instructions

2. A barrister has the right in certain circumstances to refuse to accept instructions and these Terms will apply only where a barrister has accepted instructions. Those circumstances are set out in rules C21 and C135 of the Bar Code of Conduct, the terms of which are set out in Appendix 1. Notwithstanding that instructions have been delivered to a barrister, the Barrister shall not be deemed to have accepted those instructions until they has had a reasonable opportunity to peruse them and decide whether they are appropriate for licensed access.
3. As a barrister may only accept instructions from persons entitled to instruct a barrister under the Licensed Access Rules, it is the duty of a member of the RICS wishing to instruct a barrister to identify themselves as a member of the RICS at the time of giving instructions.
4. A barrister may only accept instructions from a member of the RICS in a matter of a kind which falls generally within the professional expertise of members of the RICS. The instructing member confirms that the matter is of that kind.
5. An instructing member may instruct a barrister in their capacity as a director, partner, member or employee of a company, firm or other body. In any case where a barrister accepts instructions from a instructing member in their capacity as a director, partner, member or employee of a company, firm or other body, the obligations of the instructing member under these Terms shall be the joint and several obligations of the instructing member and that company, firm or other body, unless otherwise agreed between the barrister and the instructing member.
6. Unless the instructing member otherwise stipulates and the barrister agrees, the barrister will deal with instructions other than a brief as soon as they

reasonably can in the ordinary course if their work. Where for any reasons there is any urgency the instructing member must, when they delivers their instructions, inform the barrister or their clerk of the precise deadline(s) involved in order that the barrister or their clerk may decide whether in those circumstances they can accept the instructions. That information must be communicated to the barrister or their clerk separately from the instructions themselves. The barrister or their clerk must inform the instructing member without delay whether they can or cannot accept instructions.

7. A barrister cannot be expected to perform the functions of a solicitor or other authorised litigator and in particular to fulfil limitation obligations disclosure obligations and other obligations arising out of or related to the conduct of litigation. Circumstances may require the lay client to retain a solicitor or other authorised litigator at short notice and possibly during the case.
8. If at any stage the barrister considers it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) be instructed either together with the instructing member or in place of the instructing member, then:
 9. the barrister must forthwith advise the instructing member in writing to instruct a solicitor or other authorised litigator or other appropriate intermediary (as the case may be); and
 10. unless a solicitor or other authorised litigator or other appropriate intermediary (as the case may be) is instructed as soon as reasonably practicable thereafter the barrister must cease to act and must return any instructions.
11. Unless otherwise agreed a barrister accepts a brief upon the understanding that they may be unavoidably prevented by a conflicting professional engagement from attending the case. A barrister shall inform the instructing member immediately there is an appreciable risk that they may not be able to undertake a brief which they has accepted. In the event that a barrister has to return a brief, they shall so far as practicable do so in sufficient time to enable another barrister to be engaged and to master the brief.

Fees

12. It is the obligation of the instructing member, and of any company, firm or other body of which they are a director, partner, employee or member if they instruct a barrister in that capacity, to be responsible for they payment of the barrister's fees.
13. A barrister shall be entitled to require payment of their fee at the time of accepting instructions. Otherwise, unless otherwise agreed, a fee note will be submitted after each piece of work that the barrister carries out pursuant to their instructions, and payment is due within 30 days of receipt of the fee note.
14. A brief will only be accepted by a barrister after a fee has been agreed with the instructing member.
15. In the case of instructions other than a brief it is a matter for agreement between the instructing member and the barrister or their clerk whether the fee shall be agreed before the instructions are accepted or at any later date.

Papers

16. A barrister shall be entitled for the purposes of their records to retain his instructions or any papers delivered therewith or, if the instructing member should require the return of such instructions and papers, to take and retain a copy of such instructions and papers and of any written advice, and if so requested by the barrister it shall be the duty of the instructing member to supply them with and to permit them to retain for those purposes a copy of such instructions, papers or advice.
17. In any case where a barrister gives advice orally it shall be the duty of the instructing member to make a written record of that advice and to submit it to the barrister for their approval as soon as is practicable and in any event by such date as the barrister may reasonably require.

Limitation of liability

18. The barrister's total liability (for loss or damage of any kind including interest and costs) is limited to the amount of their professional indemnity insurance cover at the date of starting to carry out the instructions.

Appendix 1 - Rules identifying when a barrister must not accept instructions

Rule C21 of the Bar Code of Conduct

You must not accept instructions to act in a particular matter if:

- .1 due to any existing or previous instructions you are not able to fulfil your obligation to act in the best interests of the prospective client; or*
- .2 there is a conflict of interest, or real risk of conflict of interest, between your own personal interests and the interests of the prospective client in respect of the particular matter; or*
- .3 there is a conflict of interest, or real risk of conflict of interest, between the prospective client and one or more of your former or existing clients in respect of the particular matter unless all of the clients who have an interest in the particular matter give their informed consent to your acting in such circumstances; or*
- .4 there is a real risk that information confidential to another former or existing client, or any other person to whom you owe duties of confidence, may be relevant to the matter, such that if, obliged to maintain confidentiality, you could not act in the best interests of the prospective client, and the former or existing client or person to whom you owe that duty does not give informed consent to disclosure of that confidential information; or*
- .5 your instructions seek to limit your ordinary authority or discretion in the conduct of proceedings in court; or*
- .6 your instructions require you to act other than in accordance with law or with the provisions of the Handbook; or*
- .7 you are not authorised and/or otherwise accredited to perform the work required by the relevant instruction; or*
- .8 you are not competent to handle the particular matter or otherwise do not have enough experience to handle the matter; or*
- .9 you do not have enough time to deal with the particular matter, unless the circumstances are such that it would nevertheless be in the client's best interests for you to accept; or*

- .10 there is a real prospect that you are not going to be able to maintain your independence.*

Rule C135 of the Bar Code of Conduct

You must not accept any instructions from a licensed access client:

- .1 unless you and your chambers are able to provide the services required of you by that licensed access client;*
- .2 if you consider it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) be instructed either together with you or in your place.*

Appendix 3 - proposed amendments to letter accepting instructions from a licensed professional other than a surveyor and attached contractual terms

Thank you for your instructions addressed to \$\$\$ which we received on [date].

In these Chambers, while we do not accept instructions from lay clients, we do accept instructions on the attached Terms of Engagement from suitably qualified professionals who are either members of the professional bodies listed in the First Schedule to the Licensed Access Recognition Regulations published by the Bar Standards Board, or who have been expressly licensed by that Board. Subject to your confirmation that you are such a professional, we would be grateful if you would give your agreement to those Terms by signing at the foot of this letter and return it to me, if possible by email. As soon as we receive the signed copy, your papers will be placed before Counsel to check that they are suitable for Licensed Access and for further attention.

There are three matters to which we would like to draw your particular attention. First, one of the enclosed Terms is that the barrister's total liability is limited to the amount of their professional indemnity insurance cover at the date of starting to carry out the instructions. We consider that this is fair and reasonable, as most professionals, including solicitors and surveyors, are able to provide their services through the medium of a limited company or limited liability partnership, meaning that they are not personally liable. That indicates that it is, in general, considered reasonable for professionals to limit their liability, and there is no good reason for barristers to be treated differently. Barristers are required by the BSB Handbook to ensure that they have adequate insurance (taking into account the nature of their practice). If you would like to know the amount of cover applicable here, or if there are any reasons why such a limitation would not be appropriate in this case, please let me know.

Secondly, our policy concerning personal data is set out in a privacy notice which can be read at www.falcon-chambers.com/compliance/falcon-chambers-client-privacy-notice. If you would like a paper copy, please let us know.

Thirdly, in the unlikely event that you or your client are dissatisfied with the service provided by Chambers we have a Complaints Procedure, a copy of which is enclosed with this letter. We are required to ensure that the lay client is aware of our Complaints Procedure and the fact that they can also complain to the Legal Ombudsman at the conclusion of the Chambers Procedure. The Legal Ombudsman's details are as follows:- The Legal Ombudsman, PO Box 6806, Wolverhampton WV1 9WJ. Telephone – 0300 555 0333. Our Complaints Procedure is also available on our website at <https://www.falcon-chambers.com/contact-us/complaints-procedure>, or by contacting the Chambers Director, Edith Robertson (e.robertson@falcon-chambers.com). The procedure can be used by both lay and professional clients. In particular lay clients may use the procedure independently and without going through their instructing professional.

I would be obliged if you could send a copy of this letter along with our Complaints Procedure direct to your client. If you are unable to send this letter and the accompanying Complaints Procedure to your client could you please provide us with your client's details and we will send the information direct.

FALCON CHAMBERS TERMS OF ENGAGEMENT OF COUNSEL BY A LICENSED ACCESS CLIENT OTHER THAN A CHARTERED SURVEYOR

Definitions

1. In these terms:
 - 1.1 “Bar Code of Conduct” means the Code of Conduct for the Bar of England and Wales for the time being in force as set out in the Bar Standards Board Handbook as published from time to time.
 - 1.2 “Licensed Access Rules” means the rules in the Bar Code of Conduct governing the acceptance of instructions by barristers from licensed access clients.
 - 1.3 “Licensed Body” means one of the bodies listed in Schedule 1 to the Licensed Access Regulations which are available on the Bar Standards Board’s website, or any other organisation which has been expressly licensed by that Board under its Licensed Access Recognition Regulations.
 - 1.4 “Instructing Member” means a member of a Licensed Body from whom a barrister has accepted instructions in accordance with the Licensed Access Rules.
 - 1.5 “Instructions” include a brief save where the context otherwise requires.

Contents and acceptance of instructions

2. The Instructing Member must:
 - 2.1 Ensure the Instructions delivered to the barrister are adequate to supply them with the information and documents reasonably required and in reasonably sufficient time for them to provide the services requested.
 - 2.2 Respond promptly to any requests for further information or instructions made by the barrister.
 - 2.3 Inform the barrister immediately, in writing, if there is reason to believe that any information or document provided to the barrister is not true and accurate.
3. The barrister is entitled to carry out any customer due diligence required by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. The Instructing Member will provide the barrister with all reasonable assistance to carry out any necessary customer due diligence. In the event that the barrister reasonably considers that the requirements of the Money Laundering Regulations have not been satisfied, they may within a reasonable period after receipt of the Instructions withdraw any acceptance of those Instructions without incurring any liability.

4. A barrister has the right in certain circumstances to refuse to accept instructions and these Terms will apply only where a barrister has accepted instructions. Those circumstances are set out in rules C21 and C135 of the Bar Code of Conduct, the terms of which are set out in Appendix 1. Notwithstanding that instructions have been delivered to a barrister, the barrister shall not be deemed to have accepted those instructions until they have had a reasonable opportunity to peruse them and decide whether they are appropriate for licensed access.
5. A barrister may only accept instructions from a member of a Licensed Body in a matter of a kind which falls generally within the professional expertise of members of that Licensed Body. The Instructing Member confirms that the matter in respect of which the barrister is instructed is of that kind.
6. An Instructing Member may instruct a barrister in their capacity as a director, partner, member or employee of a company, firm or other body. In any case where a barrister accepts instructions from an Instructing Member in their capacity as a director, partner, member or employee of a company, firm or other body, the obligations of the Instructing Member under these Terms shall be the joint and several obligations of the Instructing Member and that company, firm or other body, unless otherwise agreed between the barrister and the instructing member.
7. Unless the Instructing Member otherwise stipulates and the barrister agrees, the barrister will deal with instructions other than a brief as soon as they reasonably can in the ordinary course of their work. Where for any reason there is any urgency the Instructing Member must, when they deliver their instructions, inform the barrister or their clerk of the precise deadline(s) involved in order that the barrister or their clerk may decide whether in those circumstances they can accept the instructions. That information must be communicated to the barrister or their clerk separately from the instructions themselves. The barrister or their clerk must inform the Instructing Member without delay whether they can or cannot accept instructions.
8. A barrister cannot be expected to perform the functions of a solicitor or other authorised litigator and in particular to fulfil limitation obligations, disclosure obligations or other obligations arising out of or related to the conduct of litigation. Circumstances may require the lay client to retain a solicitor or other authorised litigator at short notice and possibly during the case.
9. If at any stage the barrister considers it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) be instructed either together with the Instructing Member or in place of the Instructing Member, then:
 - 9.1 the barrister must forthwith advise the Instructing Member in writing to instruct a solicitor or other authorised litigator or other appropriate intermediary (as the case may be); and
 - 9.2 unless a solicitor or other authorised litigator or other appropriate intermediary (as the case may be) is instructed as soon as reasonably practicable thereafter the barrister must cease to act and must return any instructions.

10. Unless otherwise agreed a barrister accepts a brief upon the understanding that they may be unavoidably prevented by a conflicting professional engagement from attending the case. A barrister shall inform the Instructing Member immediately there is an appreciable risk that they may not be able to undertake a brief which they has accepted. In the event that a barrister has to return a brief, they shall so far as practicable do so in sufficient time to enable another barrister to be engaged and to master the brief.
11. Unless the Instructing Member expressly informs the barrister to the contrary in advance in writing, the barrister may allow the Instructions to be reviewed by another barrister or by a pupil (including a mini-pupil or other person in Chambers for work experience) in chambers, on terms that that the individual in question keeps the information confidential.

Fees

12. It is the obligation of the Instructing Member, and of any company, firm or other body of which they are a director, partner, employee or member if they instruct a barrister in that capacity, to be responsible for the payment of the barrister's fees.
13. A barrister shall be entitled to require payment of their fee at the time of accepting instructions. Otherwise, unless otherwise agreed, a fee note will be submitted after each piece of work that the barrister carries out pursuant to their instructions, and payment is due within 30 days of receipt of the fee note.
14. A brief will only be accepted by a barrister after a fee has been agreed with the Instructing Member.
15. In the case of instructions other than a brief it is a matter for agreement between the Instructing Member and the barrister or their clerk whether the fee shall be agreed before the instructions are accepted or at any later date.

Papers

16. A barrister shall be entitled for the purposes of their records to retain the instructions or any papers delivered therewith or, if the Instructing Member should require the return of such instructions and papers, to take and retain a copy of such instructions and papers and of any written advice, and if so requested by the barrister it shall be the duty of the Instructing Member to supply them with and to permit them to retain for those purposes a copy of such instructions, papers or advice.
17. In any case where a barrister gives advice orally it shall be the duty of the Instructing Member to make a written record of that advice and to submit it the barrister for their approval as soon as is practicable and in any event by such date as the barrister may reasonably require.

Limitation of liability

18. The barrister's total liability (for loss or damage of any kind including interest and costs) is limited to the amount of their professional indemnity insurance cover at the date of starting to carry out the instructions.

Data protection

19. The barrister is a data controller and will process personal data in accordance with the client privacy notice on the Falcon Chambers website.

Appendix 1 - Rules identifying when a barrister must not accept instructions

Rule C21 of the Bar Code of Conduct

You must not accept instructions to act in a particular matter if:

- .1 due to any existing or previous instructions you are not able to fulfil your obligation to act in the best interests of the prospective client; or*
- .2 there is a conflict of interest, or real risk of conflict of interest, between your own personal interests and the interests of the prospective client in respect of the particular matter; or*
- .3 there is a conflict of interest, or real risk of conflict of interest, between the prospective client and one or more of your former or existing clients in respect of the particular matter unless all of the clients who have an interest in the particular matter give their informed consent to your acting in such circumstances; or*
- .4 there is a real risk that information confidential to another former or existing client, or any other person to whom you owe duties of confidence, may be relevant to the matter, such that if, obliged to maintain confidentiality, you could not act in the best interests of the prospective client, and the former or existing client or person to whom you owe that duty does not give informed consent to disclosure of that confidential information; or*
- .5 your instructions seek to limit your ordinary authority or discretion in the conduct of proceedings in court; or*
- .6 your instructions require you to act other than in accordance with law or with the provisions of the Handbook; or*
- .7 you are not authorised and/or otherwise accredited to perform the work required by the relevant instruction; or*
- .8 you are not competent to handle the particular matter or otherwise do not have enough experience to handle the matter; or*
- .9 you do not have enough time to deal with the particular matter, unless the circumstances are such that it would nevertheless be in the client's best interests for you to accept; or*
- .10 there is a real prospect that you are not going to be able to maintain your independence.*

Rule C135 of the Bar Code of Conduct

You must not accept any instructions from a licensed access client:

- .1 unless you and your chambers are able to provide the services required of you by that licensed access client;*
- .2 if you consider it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary (as the case may be) be instructed either together with you or in your place.*

Appendix 4- amendments to <https://www.falcon-chambers.com/?/compliance/terms-of-business>

Terms of business

Members and pupil barristers of Falcon Chambers accept instructions from their instructing solicitors, and other authorised persons whose regulator is the Solicitors' Regulation Authority, on the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 (updated for the GDPR in 2018), with two additional terms. A copy of the Standard Contractual Terms with those two terms included can be downloaded from our website [here](#).

The first additional term is that the barrister's total liability (for loss or damage of any kind including interest and costs) is limited to the amount of their professional indemnity insurance cover at the date of starting to carry out the instructions. In the case of pupil barristers, the applicable limit is that of their pupil supervisor's indemnity cover. We consider this is fair and reasonable, as most professionals, including solicitors, are able to provide their services through the medium of a limited company or limited liability partnership, meaning that they are not personally liable. This indicates that it is, in general, considered reasonable for professionals to limit their liability, and there is no good reason for barristers to be treated differently. Barristers are required by the BSB Handbook to ensure that they have adequate insurance (taking into account the nature of their practice). We are happy to discuss any circumstances which make such a limitation inappropriate in any given case.

The second additional term is that, if there is reason to be concerned about payment for the work, we may ask, before accepting the instructions, that the amount of the fee be agreed and paid before the work is carried out, or for confirmation that the professional client instructing us holds money on account for payment of the fees.

We accept instructions from licensed access clients. In the case of surveyors, our contractual terms can be read [here](#). In the case of other licensed access clients, our contractual terms can be read [here](#). Both sets of terms include the limitation of liability explained above.

We do not accept instructions to act as barristers other than from solicitors and other authorised persons whose regulator is the Solicitors' Regulation Authority or licensed access clients.

We are able to accept instructions from solicitors and other authorised persons whose regulator is the Solicitors' Regulation Authority, licensed access clients or members of the public to act as mediators. Our standard terms for acting as mediators can be obtained on request from the clerks. We also accept instructions to act as arbitrators - for details see the Falcon Chambers Arbitration website, www.falcon-chambersarbitration.com.

We normally have pupils in chambers, and from time to time also students who come here for a few days to gain experience of life at the Bar. We require everyone who comes here for training or experience to sign a confidentiality agreement. By instructing us, you give your consent to them reading the papers you send us, unless you ask us to ensure that does not happen.

Our policy concerning personal data is set out in a privacy notice which can be read at www.falcon-chambers.com/compliance/falcon-chambers-client-privacy-notice.