

# Direct Access Briefs

## Accepting a Direct Access Matter

- Under the *Legal Profession Uniform Conduct (Barristers) Rules 2015* r 21, 105(a) ('LPUCBR'), a barrister is not obliged to accept instructions from a person who is not a solicitor.
- The barrister must refuse to accept the brief if there are reasonable grounds to believe that failing to retain a solicitor would prejudice the barrister's ability to advance/protect the client's interests (LPUCBR r 101(k)).
- The barrister may also refuse if they have reasonable grounds to doubt that the fee will be paid reasonably promptly (LPUCBR r 105(d)).

## Before Starting a Direct Access Matter

The barrister must inform the prospective client in writing, and obtain written acknowledgement from the client, that they have been informed of the following (LPUCBR r 22):

- The effects of LPUCBR rule 11 and rule 13.
- The possibility that a solicitor may need to be retained at short notice.
- Any potential disadvantages of not having an instructing solicitor.
- The barrister's relative capacity to provide services compared to a solicitor.
- A fair description of the barrister's advocacy work.

## Fees

Money can be received in advance for direct access matters and is classified as trust money (*Legal Profession Uniform Law 2014* (NSW) s 129 ('LPUL')). Accordingly, receipt of fees in advance are subject to the following restrictions (*Legal Profession Uniform Law Application Regulation 2015* (NSW) ('LPULAR') cl 15):

- The barrister maintains a trust money account with an Authorised Deposit-Taking Institution solely to hold fees in advance. The name of the account must comply with *Legal Profession Uniform General Rules 2015* r 35(1) ('LPUGR').
- The trust money account cannot be linked to any credit or mortgage facility.
- The barrister must notify the NSW Bar Association, within 14 days of opening the account, the information prescribed in c 15(2)(c). The ['Notice of Opening a Trust Money Account' form](#) will be accepted.
- The fees are deposited as soon as practicable after they are received.
- The barrister provides detailed written receipt to the person who paid the fee containing the information prescribed in c 15(2)(g)(i)–(vi). This receipt must be retained by the barrister for 7 years, or until the matter's completion (c 15(3)).
- The money must remain in the trust account until a bill is given to the client, refunded to the client, or paid to a solicitor later engaged by the client.
- The barrister must appoint a qualified external examiner (under LPUGR r 65) to carry out an annual examination of the account for the reporting period (1 April – 31 March), with the report to be submitted to the NSW Bar Association no later than 7 June every year. A list of examiners can be found at: [Law Society of NSW - Find An External Examiner](#). Alternatively, an accountant qualified under LPUGR r 65 can be elected.

### *Other Relevant Provisions*

- Regarding costs disclosure, the barrister must comply with *LPUL* (NSW) s 174, 177, 179, 190–193.
- A barrister must not receive any money by way of loan from the client/client's relative/client's business during the course of the retainer (unless their ordinary business involves lending money) (*LPUGR* r 48).
- A barrister is entitled to make a conditional costs agreement with the client, in compliance with *LPUL* s 181.
- While a lump sum bill may be provided (*LPUL* s 186), a client can request an itemised bill (*LPUL* s 187)

### **During a Direct Access Matter**

- Set expectations and be transparent about the role of a barrister.
- Continuously assess the suitability of direct access arrangements, returning the brief if necessary to protect the client's interests (*LPUCBR* r 101(k)).
- Maintain detailed records of client interactions, including ongoing advice, potential cost liabilities, and signed client instructions (including, where appropriate, acknowledgement that instructions are contrary to the barrister's advice). This may include records of direct speech.
- A barrister must inform the client of the alternatives to fully contested adjudication which are reasonably available, unless they reasonably believe the client already understands the alternatives and can make a decision in their best interest (*LPUCBR* r 36).
- Regarding offers of compromise, the barrister must disclose to the client information in relation to the effects of refusing to accept the offer (*LPULAR* s 29).
- If a solicitor is retained, ensure no further direct communication with client in absence of the solicitor.
- Strictly comply with *LPUCBR* rules 11 and 13.

### **Bringing the Arrangement to an End**

- The barrister **must** return the brief where there are reasonable grounds to believe that the failure to retain a solicitor would seriously prejudice the barrister's ability to advance the client's interests (*LPUCBR* r 101(k)).
- The barrister **may** return the brief where they have reasonable grounds to doubt that the fee will be paid in accordance with the costs agreement (*LPUCBR* r 105(d)).
- The barrister **may** return the brief where their advice as to the preparation of the case (not including its compromise) has been rejected by the client (*LPUCBR* r 105(g)).
- Where the brief is accepted under a conditional costs agreement, the barrister **may** return the brief if they consider on reasonable grounds that the client has unreasonably rejected an offer to compromise contrary to their advice (*LPUCBR* r 106).

Note that in a serious criminal matter, *LPUBC* r 107 places restrictions on when the barrister may return the brief.