

Direct access – your flexible friend



by Andrew Butler

DID you know that, if you find yourself in a legal dispute, you can go direct to a barrister? Since 2004 it has been possible for individuals and businesses alike to bypass the services of solicitors and go straight to Counsel. This can result in considerable savings, not only in financial terms (barristers' hourly rates are generally lower than solicitors'), but in terms of time and aggravation. It can also result in an earlier and more favourable resolution of disputes; a well-worded letter written from a barrister on his chambers notepaper can focus the mind of a recalcitrant debtor remarkably quickly.

To make the best use of this entitlement though, it is important to understand what barristers do. Essentially, barristers have two functions. Firstly, they have an advisory role and can advise clients on matters such as the interpretation of a statute or the proper meaning of a contract, or the merits of a dispute more generally. Secondly, they provide drafting and advocacy services. They have rights of audience in all Courts and tribunals and are specialists in matters of Court procedure and presentation.

What barristers do not do is undertake day-to-day management of clients' legal affairs, or the general conduct of litigation. That is the function of solicitors. So barristers are not allowed, for example, to file documents at Court on your behalf, nor involve themselves in the gathering of evidence by instructing experts on your behalf, or tracking down and taking statements from important witnesses. A good way of looking at it is to see barristers as reactive rather than proactive. They will give you the answers to specific questions put to them, or undertake particular tasks, but they will not exercise the general supervisory role that solicitors will.

When might a dispute or problem lend itself to direct access? Consider:

- is the problem self-contained? If you have a specific legal question to which you require an answer, or a specific hearing for which you may wish to have representation, direct access might be

the way to go. If however you are looking for general management of a dispute, or if you have a complex set of facts which does not give rise to an easily identifiable range of issues, you may benefit from instructing a solicitor first.

- do you, the client, have the resources and time to manage the dispute? It is not much good asking a barrister to provide you with an answer if you do not have the ability to use the information appropriately. Again, using a solicitor might be sensible in these circumstances.
- would using direct access send out the right message? Tactically, it can sometimes look better to have a full legal team, solicitors and Counsel, on your side. If you want to give the impression that money is no object, using direct access might not be the best way to achieve that end.

* The practicalities of finding a barrister need not prove too daunting. Googling 'employment direct access barrister' is a useful starting point. Numerous legal directories are available such as the Bar Council's Bar Directory, online at www.legalhub.co.uk, or independent publications such as the Legal 500 and Chambers & Partners. The vast majority of chambers now have effective

websites where further research as to a barrister's experience and capabilities can be undertaken.

So far as fees are concerned, the fact that barristers are self-employed individu-

Possible direct access cases

- you wish to introduce new working practices but are concerned that they might potentially have a discriminatory effect. A barrister can advise you whether they do or not, and if they do how your objectives might be achieved in a non-discriminatory way.
- a client is refusing to pay for goods and you wish to secure their return pursuant to a retention of title clause. A barrister can advise you on your rights, draft an appropriately-worded letter, and failing compliance can quickly arrange and attend an injunction hearing on your behalf.
- you are in dispute with your landlord about whether particular repairs to your premises are within his repairing obligations under the lease. A barrister can attend a site visit and prepare an opinion setting out his interpretation of the lease. You and the landlord can even agree that you will be bound by that opinion as a means of resolving your dispute.

als means that they can usually be fairly flexible. Advisory work and drafting is usually undertaken at an hourly rate; advocacy by contrast is generally remunerated by a 'brief fee' (with "refreshers" for subsequent days) which will be fixed irrespective of the length of the hearing. But barristers can agree to different fee structures if they wish, and a good set of chambers will usually do what it can to accommodate a particular client's wishes. Whatever approach is taken, you should insist on a client care letter which accurately sets out the work required and the fee agreed before any work is undertaken.

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tanfieldchambers.co.uk



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