



## The Faculty of Advocates

### **DIRECT ACCESS INSTRUCTIONS (October 2020)**

1. An Advocate may accept direct access instructions from persons named in the Schedule hereto.
2. Any Advocate accepting direct access instructions does so subject to the terms of paragraphs 8.2 and 8.3 of the Guide to Professional Conduct of Advocates and the Standard Terms of Instruction as they may be updated by the Faculty from time to time.

### **Schedule**

1. The following may instruct on their own behalf:
  - a) Any person or body subject to complaint to the Scottish Public Services Ombudsman;
  - b) Any body incorporated by statute which is so established to represent or regulate any trade, business or profession;
  - c) Any community interest company registered as such;
  - d) Any public limited company regulated by the London Stock Exchange;
  - e) Any public authority in terms of the Freedom of Information (Scotland) Act 2002 or the Freedom of Information Act 2000;
  - f) Any person or body subject to complaint to the European Ombudsman;
  - g) Any public authority under the law of the European Union;
  - h) Any person or body acting under law in a governmental, judicial or legislative capacity;
  - i) Members of the British and Irish Ombudsman Association or the International Ombudsman Institute;
  - j) Faculty Services Ltd; and
  - k) The Scottish Trades Union Congress

2. The following may instruct on their own behalf or on behalf of their clients:

- a) Army Legal Service
- b) Directorate of Legal Services of the Royal Navy
- c) Naval Prosecuting Authority
- d) Directorate of Legal Services of the Royal Air Force
- e) Officers of Arms in Ordinary (The Heralds and Pursuivants of the Lyon Court)
- f) Any person or body on the Financial Services Authority Register
- g) Any person or body on the register maintained by the Office of the Immigration Services Commissioner.
- h) Parliamentary agents
- i) Non-practising Members of Faculty
- j) European lawyers registered under the European Communities (Lawyers Practice)(Scotland) Regulations
- k) Persons on the register of foreign lawyers held by the Law Society of Scotland;
- l) Qualified conveyancing and executry practitioners in Scotland; and
- m) Persons qualified to practise law in a jurisdiction other than Scotland who are in practice providing legal services.
- n) The Faculty of Advocates Free Legal Services Unit

3. The following may instruct on their own behalf, and their members may instruct on their own behalf or on behalf their clients:

- a) Law Societies of England and Wales, and Northern Ireland
- b) The Association of Commercial Attorneys
- c) Architects Registration Board of the United Kingdom
- d) Designated Professional Bodies under the Financial Services and Markets Act 2000
- e) British Branch of the Society of Trust and Executry Practitioners
- f) The Society of Messengers-at-Arms and Sheriff Officers
- g) Professional bodies in the United Kingdom which have been awarded a Royal Charter
- h) Electrical Contractors' Association of Scotland (SELECT)
- i) Property Factors Registered on the Scottish Property Factors Register
- j) The Chartered Insurance Institute
- k) Institute of Trade Mark Attorneys
- l) Pensions Management Institute

- m) Incorporated Society of Valuers and Auctioneers
- n) Institute of Chartered Accountants in Ireland
- o) Association of Average Adjusters
- p) Association of Taxation Technicians
- q) Insolvency Practitioners Association
- r) Institute of Indirect Taxation

4. The following bodies may instruct on their own behalf or on behalf their clients or members:

- a) Any body on the register maintained by the office of the Scottish Charity Regulator or the Central Register of Charities maintained by the Charity Commission for England and Wales;
- b) Any voluntary organisation in Membership of the Scottish Council for Voluntary Organisations, the National Council for Voluntary Organisations, the Northern Ireland Council for Voluntary Action, or the Wales Council for Voluntary Action
- c) Any trade union or employers association on the list maintained by the Certification Officer (see [www.certoffice.org](http://www.certoffice.org))
- d) Whealing Project Consultancy Limited
- e) Dundee Employment Law
- f) NAB Customer Support Group
- g) Chamberlain McBain
- h) MR Associates
- i) The Medical and Dental Defence Union of Scotland
- j) The Medical and Dental Defence Union
- k) The Medical Protection Society.
- l) Scottish Care
- m) Families Need Fathers Scotland
- n) Federation for Industry Sector Skills & Standards
- o) Scottish Association of Landlords (SAL)
- p) RPL Partnership
- q) Rodolphe Gyselinck
- r) Charlotte Street Partners
- s) DM Legal Claims Ltd
- t) Camus Consulting

\*It is likely that this list will continue to be updated and you should consult the Faculty's Website for a fully updated list at: [www.Advocates.org.uk](http://www.Advocates.org.uk)

## **Direct Access to Advocates: Standard Terms of Instruction**

Revised: 1 February 2019

These Standard Terms of Instruction apply whenever the person instructing is neither qualified to practise as a solicitor in Scotland, nor by law authorised to act as a solicitor to a public department in Scotland. The person or body instructing is here referred to as the instructing person, although they may be instructing on their own behalf.

### 1. Introduction

- 1.1 Except as otherwise provided hereafter, Advocates will conduct themselves in accordance with the 'Guide to the Professional Conduct of Advocates' of the Faculty of Advocates, referred to as 'the Guide', and these terms of instruction should be read together with the Guide. If instructions are given by a registered European lawyer, or by a lawyer in a country of the European Union other than Scotland, these terms should also be read with Part 5 of the 'Code of Conduct for Lawyers in the European Union' issued by the Council of the Bars and Law Societies of the European Union.
- 1.2 Advocates are holders of a public office, who owe duties to the Court and the public as well as to those who instruct them. They cannot in law, and do not, enter into any contractual relationship with those who instruct them or with their clients, and nothing in these terms should be taken to suggest otherwise.

### 2. Instructions

#### 2.1 General

- 2.11 Subject to the Guide and the provisions below, an Advocate may accept instructions from any person under paragraph 8.3 read with the Schedule to Appendix D of the Guide, without the need for instruction through a Scottish solicitor, in relation to any matter.
- 2.12 Such instructions should be in writing (which includes e-mail). They may be sent directly to Counsel, or to his or her clerk. If formal acknowledgement is required, the instructions should be sent to the Advocate's clerk with a request for such acknowledgement. As an Advocate cannot be responsible for the general conduct of any matter (see paragraph 2.3 below), the instructions should specify the particular services which are required from the Advocate. It is important to specify these services as accurately as possible. An Advocate would not normally be expected to provide services beyond those specified in any particular instructions.
- 2.13 It is the responsibility of the Advocate to satisfy himself or herself that any instruction received may properly be accepted in accordance with paragraph 8.3.4 of the Guide. Whether or not that is the case, an Advocate may decline to accept instructions under these arrangements.
- 2.14 An Advocate is entitled at any stage to require, as a condition of continuing to act in the matter, that a person qualified to practise as a solicitor in Scotland shall take over the instruction of the work concerned or that the services of such a solicitor shall otherwise be retained to assist in the future conduct of the matter, if he or she considers that this is necessary in the interests of the client or the interests of justice.

- 2.15 As Advocates carry out all their work personally and cannot always predict with certainty their other professional responsibilities, instructions under these arrangements are accepted on the basis that the Advocate may be unavoidably prevented, sometimes at short notice, from attending at any hearing or other engagement in connection with the matter on which he or she is instructed on account of the precedence accorded to instructions for Court appearances, in terms of paragraphs 8.6 and 8.7 of the Guide. However, an Advocate will not discriminate in this respect between direct access instructions and otherwise.
- 2.16 If an Advocate identifies a clash of commitments which is likely to prevent attendance at any hearing, either the Advocate or the Advocate's clerk will warn the instructing person as soon as possible and will, if desired, suggest the names of other Advocates who are willing and able to take over the instructions. The Advocate will co-operate so far as possible with any other Advocate who takes over. In no circumstances, however, will instructions be passed to any other Advocate without the express agreement of the instructing person.
- 2.17 In any case in which an Advocate accepts instructions from a person in his or her capacity as a director, partner, associate, Member or employee of a company, firm or other body, the obligations of the instructing person under these terms of instruction (and in particular obligations to make payment of fees) shall be the joint and several obligations of him or her and that company, firm or other body.
- 2.2 Categories of work to which these arrangements apply.
- 2.2.1 An Advocate may accept instructions under these arrangements in relation to any kind of work except as excluded below. There are, however, circumstances in which it will not practically be possible for this to be done, in particular where the work is in a Scottish Court, where it may be necessary for a Scottish solicitor to be involved.
- 2.3 Excluded Work
- 2.3.1 An Advocate shall not accept instructions to carry out any work of the type listed at paragraph 8.3.4 of the Guide
- 2.4 Documents
- 2.41 All papers will be returned to the instructing person on the completion of the work instructed.
- 2.42 However, unless agreed otherwise, the Advocate is entitled to keep copies of any documents sent for the Advocate's own professional purposes.
- 2.43 Copyright in any work produced remains with the Advocate who is its author, but the instructing person may publish it to any third party to whom publication was contemplated by the instructions in question.
- 2.44 All documents and other information sent to an Advocate under a direct access instruction are received in confidence and are subject to legal professional privilege. They will not accordingly be disclosed to any third party except in terms of a statutory or legal requirement on the Advocate to do so; with the express consent of the instructing person to the disclosure; or in terms of the disciplinary rules of the Faculty of Advocates.

### 3. Payment of Fees

- 31 It shall be the professional obligation of the instructing person to make payment of the Advocate's fees. That is so whether or not the identity of the client is stated. No agreement to the contrary will be of any effect.
- 32 Upon acceptance of instructions, the Advocate will be entitled to payment of a reasonable fee. What is a reasonable fee depends on the whole circumstances of the particular matter on which the Advocate is instructed. Unless otherwise agreed, an Advocate's fees cover all expenses incurred in relation to the matter instructed, such as travelling expenses. All fees are stated as exclusive of, and are subject to, Value Added Tax at the appropriate rate, if applicable.
- 33 Unless otherwise agreed between the instructing person and the Advocate's clerk, a fee note will normally be submitted at the conclusion of each item of work for which the Advocate is instructed.
- 34 It is often helpful to all concerned to agree the amount of a fee and/or the basis of charging in advance. Discussion about such an agreement must take place with the Advocate's clerk or deputy clerks, because professional rules prohibit discussion or negotiation of fees or associated matters directly with the Advocate. Where such an agreement has been reached, neither the instructing person nor the Advocate is entitled to challenge it later.
- 35 A fixed fee paid in advance is not client money.
- 36 If an Advocate requires an upfront payment to account of fees he must ensure it is a reasonable payment for the work to be done, that the client understands and has been informed in writing that once paid it will not be the client's money and he will not be beneficially entitled to it, and that any difference between the sum paid to account and the Advocate's fees will be repaid.
- 37 If an Advocate makes use of an escrow service for receiving payments of fees he must ensure it will not result in a breach of the prohibition on handling client money.
- 38 Unless otherwise agreed between the instructing person and the Advocate's clerk, an Advocate's fee shall be paid by the instructing person within twenty-one days of submission of each fee note.
- 39 Subject to paragraph 3.4, the instructing person is entitled to challenge the fee proposed or the basis of the charge. In the event of such a challenge, the instructing person should inform the Advocates clerk concerned (or, in the case of fee notes issued by Faculty Services Limited, Faculty Services Limited) in writing as soon as possible and in any event within twenty-one days of the issue of the fee note; and failing such challenge, the instructing person is presumed to agree that the fee proposed is reasonable and becomes responsible to make payment of it.
- 310 If an instructing person challenges the fee proposed, the matter will normally be resolved by negotiation between them and the Advocate's clerk. If they cannot agree, either the instructing person or the Advocate is entitled to require that the matter be determined by a mutually agreed third party, whom failing by the Auditor of the Court of Session, who shall then adjudicate as to what is a reasonable fee in the circumstances on an agent and client, client paying, basis.

- 311 In the case of fee notes issued by Faculty Services Limited, all fees should be paid to Faculty Services Limited, and not directly to the Advocate
- 312 An Advocate may not accept a general retainer from the instructing person.