

## Instructing Counsel Help Guide

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If you've been told by your solicitor that it's time to instruct counsel, you might not be sure what to expect. We've worked with barrister and mediator Elaine Palser from Outer Temple Chambers to put together this help guide.

#### Why might you need to instruct a barrister?

Barristers are often referred to as 'counsel'. They have three main roles:

1. To offer highly specialised advice.
2. To draft vital legal paperwork for court cases.
3. To represent you in court.

You will need to instruct a barrister if you have decided to take a legal matter to court. This could include an inheritance claim, challenging a Will, or a Court of Protection matter.

Once you have appointed counsel, they will provide expert and practical advice on your case. This might be in person or in writing, depending on the circumstances. Your barrister will work alongside your solicitor to determine the strength of your case and what further evidence might be needed to ensure the best chance of success.

Though it's not possible to predict the outcome of a court case, your barrister will be able to provide a reliable and rigorous opinion on likely outcomes, supported by their knowledge of the litigation process and the case authorities involved.

#### When is the right time to instruct a barrister?

The right time to instruct a barrister will usually depend on advice from your solicitor. However, it's often helpful to do this soon after your decision to take a matter to court. Involving counsel in the early stages will mean that they can start working alongside your solicitor as early as possible. Together, your legal representatives will be able to draw on their different skills and strengths to build your case.

Your solicitor will help you to find a barrister with the right expertise and experience for your case. If you have any suggestions of your own, your solicitor will be able to help you explore the suitability of these. They'll also be able to provide you with an indication of the cost of the barrister and will handle any negotiations relating to this on your behalf. It's usual for the barrister's fees to be paid by the solicitor, who will then pass this cost on to you.

Which barrister is right for you will depend on a wide range of factors. When your solicitor recommends a barrister, they'll consider the facts of the matter and the kind of experience needed, along with which barrister is likely to be the best personality match.

### What to expect when you meet with a barrister

Barristers and solicitors have different roles within the legal system. This means that they are likely to approach your matter differently. When you meet with your barrister for the first time, you may find they have a fresh perspective to offer.

Though you will usually meet with your barrister at least a few times (face to face, via video call or over the phone), much of the work they do will be done in collaboration with your solicitor. Typically, the two legal professionals working on your behalf will synergise their individual strengths in working together to brainstorm strategies, run ideas past each other, and test the strengths and weaknesses in your case.

### What will your barrister do?

Most people have a fair idea of what a barrister does once your case actually gets to court, but you may not be familiar with all the work they do in preparation for this.

Before you go to court, your barrister will work alongside your solicitor to build your case and make it as strong as possible. This will include:

#### *Drafting a statement of case*

If your matter goes to court, a statement of case will often be required. (This can also be called 'particulars of claim' or 'defence'.) These documents are usually drafted by barristers rather than solicitors.

The deadline to submit your statement of case once you've been given a court date can be tight. The earlier your barrister has been involved in the case, the better prepared they'll be.

#### *Advising on witness statements*

Your legal team will also need to draft witness statements for the case. Your solicitor will usually take the lead on this, but your barrister's input will be vital. The experience your barrister has in court will give them an excellent understanding of possible weak spots in witness statements and how these might be targeted during cross examination. Your barrister will therefore be very well placed to advise on ensuring statements are as strong as possible.

### *Considering other evidence and formulating strategy*

Barristers also use their extensive experience to assist solicitors in developing strategy. This includes considering any evidence that could be vital to the case, whether documents, statements from witnesses or statements from experts.

### *Negotiating and drafting settlement agreements*

It often won't be in anyone's interests for a case actually to make it to court. When appropriate, your barrister will work alongside your solicitor to try to settle your case before it gets there. This will include considering suitable tactics, handling negotiations and drafting a reliable settlement agreement.

## What will your barrister do in court?

If your matter does go to court, your barrister will argue your case there. Barristers are specialist litigators and your representative will have a great deal of experience in representing you in this way.

This will include:

- Supporting you throughout the process.
- Calling and questioning your witnesses.
- Skilfully cross-examining any witnesses for the opposition.
- Making persuasive closing submissions on why the case should be decided in your favour.

## How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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