

Committee of the Bar Council revealed no marked increase in direct access complaints or even that they were more prolific than other areas of practice.

Vexatious allegations

However, it is not the case anymore. It has changed for the worse, and the change seems to correspond with the creation of the Legal Ombudsman (LeO) service in late 2010 and with a new breed of direct access client.

Ten years on, there are litigants who have learnt to play the system like never before, to search for and procure something for nothing, if they can, to use the LeO, chambers' complaints procedures, the internet and, of course, the BSB, to waste time and cause massive disruption, harassment and damage to members of the Bar.

As someone who specialises in defending barristers and solicitors in disciplinary cases (often on direct access), the BSB and LeO do not appear to mind their processes becoming a forum for vexatious allegations.

LeO, in particular, seems to bend over backwards to accommodate the grievances of direct access clients and to sacrifice professional reputations in the name of service. There are cases that merit such remedies, but there are many that do not.

As ever, the new complaints system, in effect, punishes the innocent with its inevitable delays caused by a somewhat doctrinal and seemingly one-sided search for 'poor service'; The fact that these enquiries are not conducted by lawyers means that the vexatiously driven direct access client may well find a sympathetic ear for any or all ills, however irrational, imagined or irrelevant. From the Bar's viewpoint, LeO's approach since 2010 has made direct access work less enjoyable and much higher risk for complaints and claims. From early 2014, barristers have been entitled to apply to conduct litigation. It was never my intention, or that of any of the 'founding fathers' of the public access scheme, that it should bring about fusion. But the scheme has been treated as a launch pad for fusion of the professions.

The move by the BSB towards entity regulation makes a further, dramatic broadening of the direct access scheme not merely expedient, but inevitable.

The direct access scheme has never been embraced by solicitors. At first, we argued that it represented a new opportunity for solicitors to be brought into our cases by us. However, in reality, the majority of PA clients instruct one lawyer because they cannot afford two and no force on earth could make them instruct a solicitor.

That said, I have brought firms of solicitors into my direct access cases, which has, in turn, assisted me to develop new professional connections with solicitors.

Hands on

Having become known as 'Mr Direct Access', with remarks may come as something of a surprise. While the practices of some firms are over-rigid, for example, an unwritten rule that the barrister must not email the client, or speak to him or her directly, most modern law firms embrace a user friendly, unstuffy barrister who is 'hands on'. But if I had a choice between a 'pure' direct access case and a solicitor-instructed case, where the solicitor did not stifle my creativity, I would always choose the latter. There is no substitute for the division of labour and pressure-relieving role of a good, experienced, dependable instructing solicitor.

It is very difficult at times to prepare a case for hearing and concurrently field dozens of emails, and even harder to draft complex submissions while also supervising bundle preparation without any possibility of delegation.

The epoch of rapid communication, the immediacy of information on the internet, cost cutting and a general lack of respect for reputations, would always have produced something resembling the public access scheme.

Overall, it has been a force for good in its first ten years, as it has enfranchised clients and barristers alike, and it will continue to have that benevolent effect. **5J**



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