



## **An explanation of the barristers' profession for banks**

### **Purpose**

Various measures implemented by banks aim to offer a vital cash injection to businesses that have been adversely affected by Covid-19. However, the Bar is falling outside the remit of these measures due to technicalities concerning how barristers are paid. Recognised by the Government as key workers critical to the functioning of the justice system and faced with the financial implications of the closures and reduced operating hours of courts, barristers need urgent help. We believe that the Bar should not be excluded from accessing the same financial assistance that their counterparts in other professions receive, so have sought to provide an explanation of the profession to aid banks' understanding.

### **Background**

Self-employed barristers immediately become sole traders in 'independent practice' upon finishing their academic and vocational training, rather than being employed by a company or firm. These sole traders may work in 'chambers', which is an administrative unit of a collection of barristers. 'Chambers' can refer to the business of a sole-practitioner barrister and/or to that of large groups of barristers, which have commercial premises across several locations. The main expenses of chambers are typically rent and facilities management, business rates, staff, and those associated with IT and marketing or business development.

For the purposes of managing necessary services, chambers typically operate as a Trade Protection Association ("TPA"), an arrangement authorised by HMRC enabling the tax matters of the body to be treated similarly to an incorporated company. Fewer chambers operate through a limited 'service company', where the business of chambers is divided between the Board of the limited company (which deals with all financial aspects of the business) and the Board of chambers (which deals with other issues relevant to chambers' members).

In either case, chambers are essentially funded in the same way: members are charged (usually monthly) a set percentage of their fee income received in that period and may also be charged a further fixed amount for rent and/or membership. The total amount of chambers' contributions is usually estimated annually in advance to meet the budgeted expenditure of chambers and, any surplus arising from chambers exceeding their forecasted income or

spending less than accounted for, may either be paid back to chambers' members on a pro rata basis or used as a contingency.

### **How self-employed barristers are paid**

Self-employed barristers generally receive instructions and payment from three sources: legal aid; public funding under contract from government departments or local authorities; or from private clients.

Most barristers' fees are paid in arrears for work done. In legal aid cases there are often considerable delays between the issuing of instructions by the client's solicitor, the conclusion of the case and the assessment and payment of the barrister's fees. Whilst there can be some scope for interim payments in long-running matters, most barristers will be working well in advance of any receipt of payment.

In private cases, fees will be agreed at the outset by negotiation between the solicitor and the barrister or their clerk to be paid once the work is completed and a fee note issued. Typically, the solicitor will either be liable to pay the fees within a set period or once they have received funds from the lay client. In relation to the latter, the solicitor has no obligation to pay the barrister until the lay client has paid the solicitor's bill.

Barristers and chambers are not permitted to hold client funds on account. So, as well as operating almost constantly in arrears, a barrister is often kept waiting for the payment of fees well beyond their due date.

### **Considerations concerning Bounce Back Loan applications**

Chambers (operating as a TPA or through an incorporated company) and self-employed barristers (as sole traders) are eligible to be considered for a loan under the Bounce Back Loan Scheme ("BBLs"), provided they meet both the British Business Bank ("BBB") and the individual lender's criteria. The BBLs provides loans between £2,000 and £50,000, capped at 25% of the business' annual turnover. This limit may mean that the BBLs is not of meaningful use to most chambers as their annual operating expenditure is significantly higher, though they may choose to use the BBLs to refinance existing loans and overdrafts.

However, in their capacity as sole-traders, self-employed barristers may be able to derive significant value from being able to access the loan, which in turn would support the functioning of the wider justice system. Unfortunately, barristers have been struggling to successfully apply under the BBLs due to misunderstandings with regards to their financial situation.

Some self-employed barristers may not derive their entire income from their work in independent practice, for instance they may be Judicial Office Holders or attached to law firms as Directors. This can result in the barrister being affiliated with more than one company, which has been grounds for the refusal of loans under the BBLs. Where a barrister only applies

for a Bounce Back Loan in their capacity as a sole trader, provided they meet the eligibility criteria established by the BBB and the individual lender, this should not be prohibitive.

As explained above, it is also standard practice for barristers to pay chambers' contributions, to cover expenses associated with their administrative unit. These contributions are often deducted from their earnings at source. This can result in a discrepancy between a barrister's quoted annual turnover and monies entering their account, which has caused some banks to refuse loan applications. This effectively cuts off barristers' access to the 100% government-backed loan, based purely upon the financial procedures associated with their profession and, in respect of those who under legal aid word, implemented by the same government.

If these roadblocks could be resolved, the BBLs could be a useful tool to support the Bar through the ongoing Covid-19 crisis.