

EXEMPTION FROM BAR LIBRARY MEMBERSHIP

GUIDANCE NOTES

(As revised in September 2017)

The Rules

The Code of Conduct provides that a barrister in independent practice shall be a member of the Bar Library. The relevant provisions of the Code are as follows:

- 1.09 *Every barrister in independent practice shall be a member of the Bar Library.*
- 1.10 *The Bar Council may, in its discretion grant an exemption from the requirement that a barrister shall be a member of the Bar Library.*
- 1.11 *Any barrister who applies for such an exemption must demonstrate, to the satisfaction of the Bar Council, that he:*
- i. has the necessary experience to practise outside the Bar Library;*
 - ii. has access to adequate library facilities, which are defined as facilities commensurate with those available to members of the Bar Library;*
 - iii. has the ability to manage his practice efficiently;*
 - iv. is in good standing with Her Majesty's Revenue and Customs;*
 - v. either holds a valid and subsisting practising certificate for the Bar of Northern Ireland or has simultaneously applied and paid for a practising certificate to cover the period 01 January to 31 December of any given year.*
- 1.12 *If the Bar Council grants such an exemption, it may, in its discretion, impose such restrictions on the barrister's practice as it sees fit and it shall be a condition of the grant of such exemption that the barrister undertakes to abide by such restrictions as are imposed.*

It is open to each individual barrister to argue for an exemption from the requirement that he or she shall be a member of the Bar Library and the Exemption Committee (a Committee of the Bar Council) may, in its discretion, grant such an exemption provided certain criteria are met. The following Guidance Notes will help you to decide whether you may be considered for an exemption.

Logistics

- You should apply for exemption of membership of the Library on the appropriate application form available from the Bar Council Office and complete all relevant sections of the form (including the provision of a photograph). Please also provide evidence in relation to each of the criteria set out in Rule 1.11 above. Resource lists outlining the minimum resources that barristers are expected to have personal access to in areas in which they wish to practise are provided to assist applicants with evidencing 1.11 (ii).
- You should carefully consider whether your application is more likely to be successful if you focus the areas in which you wish to practise.
- You should also pay the relevant administration fee for consideration of your application, which has been fixed by the Executive Council and is presently £500 and which is strictly non-refundable
- You must apply for and pay for a Practising Certificate, currently £250. This fee is refundable should your exemption application be declined and you then decide you do not wish to practise in Northern Ireland.
- You should inform the Bar Council immediately of the address from which you will be practising should your application for exemption be successful, together with a contact telephone number.
- You must also inform your professional indemnity insurer of your new address if your application is successful.

Please note that if the Exemption Committee grants an exemption it may, in its discretion, impose such restrictions on your practice as it sees fit and it shall be a condition of the grant of such exemption that you undertake to abide by such restrictions as are imposed. Failure to do so is likely to result in disciplinary action.

Please also note that the Exemption Committee will refer to records to see whether you meet the requirements of the rules. These records are not always complete, e.g. if you have spent time away from practice. It would be helpful when completing your application form, therefore, to provide a brief resume of your time in practice. This is important in all cases but particularly so if your experience is below, or close to, the 7 year guideline outlined below.

The Bar Council will notify the Legal Services Commission, the Law Society and the Inn of Court that you are not a member of the Bar Library once your membership ends (whether or not your application is successful).

You may be required to attend for interview to discuss your application for exemption and a member of the Exemption Committee may visit your practising address to provide advice, if they can, and to ensure, from the Committee's point of view, that the arrangements which you have in place are satisfactory.

Rule 1.11(i): “Necessary Experience”

What constitutes “necessary experience” will vary according to a particular applicant's circumstances. As a general guide, an applicant will be expected to have substantial practical experience of the area(s) of law in which he or she intends to practise.

It is generally accepted that counsel in their early years of practice (years 1-7) benefit significantly from their membership of the Bar Library. They tend to have limited experience, both practical and academic, in the areas of law in which they practise. Their early practices at the Bar tend to be broad/general and the Library provides the necessary broad range of up-to-date academic and practical resources (both electronic and paper-based). Furthermore, it does so at a very competitive rate, particularly given the fact that most very junior counsel can avail of the substantial subsidy which is available for counsel in years 1-7. Counsel in their early years of practice also benefit significantly from the fact that they enjoy, within the Library system, ready access to many more senior colleagues who are, in the tradition of the Northern Ireland Bar, willing to provide advice, assistance and guidance in the areas of practice in which they have experience and expertise. In these circumstances, it is less likely that someone who has been practising as a Barrister for less than 7 years will be granted exemption. However, each application will be judged on its own particular facts.

Rule 1.11(ii): What is meant by “access to adequate Library facilities”?

Your information resource facilities must be adequate for the nature of your practice and to ensure that you are up to date on the areas of law in which you specialise.

The Rules clearly provide that they must be at least commensurate with those available to members of the Bar Library engaged in a similar practice.

This is an extremely important criterion to which the Exemption Committee will pay close attention. It is rooted in the requirements of consumer protection, namely that the Bar Council cannot permit a barrister to undertake independent practice without assurance that he or she is appropriately resourced to discharge the professional obligations and high standards expected of him or her under the Code of Conduct in relation to each particular instruction accepted. Accordingly, you will be expected to provide full details of the resources available to you should you practise without being a member of the Library.

The majority of barristers will do much of their preparation in the evening and at the weekend. Also solicitors will expect a prompt answer to their questions. Consequently, it will be necessary to demonstrate that you have the relevant and up to date text books and electronic resources in your area of practice close to hand.

You must have at your disposal the core resources applicable to running a practice in Northern Ireland. A list of these resources has been drawn up by the Member Services Committee and will be reviewed from time to time. The current list is attached for information. Exemption is likely to be granted only exceptionally where these core resources are not available to you.

Relevant law reports will also be essential.

It is imperative that you keep your text books/ loose-leaf subscriptions up to date. You are likely to be asked to provide evidence that your subscriptions are current and live.

Legal information databases contain much of the essential legal information you require. They also serve as vital current awareness tools. You will require the relevant subscriptions to commercial databases, which will not be available at the highly discounted rates available to those who are members of the Bar Library, or to demonstrate to the Committee's satisfaction that you have the necessary access to such databases.

From 2016 onwards, all members of the Bar Library have access to Valentine's All the Law of Northern Ireland online through the LexisNexis platform. The Member Services Committee, which is responsible for approving purchase of new Library and Information resources, recognises that currency of the Valentine resource can only be guaranteed through access online in preference to the CD Rom. Therefore, for 2018 applications and beyond all applicants must demonstrate that they have personal unrestricted online access to Valentine's All the Law of Northern Ireland which is commensurate with that available to members of the Bar Library.

As some applicants in the past have relied on associate or external membership of Queen's University Library or the Law Library in Dublin, or on membership of an Inn of Court in London, information on how such memberships are generally viewed is contained as an appendix to these notes. In summary, whilst such membership may be relevant to meeting the criterion in Rule 1.11(ii), it is unlikely of itself to be considered adequate. This is because such membership does not offer access to important resources commensurate with that available to members of the Bar Library.

Rule 1.11(iii): What is meant by managing your practice "efficiently"?

Essentially, you need to have systems which will ensure that, amongst other things:

- Briefs and instructions are logged in on arrival;

- You have adequate facilities to ensure that work is completed in good time and that you do not take on more work than you can manage;
- You have suitable diary facilities to identify clashes of dates of hearings, consultation and other appointments at the earliest possible stage and remind you of those appointments;
- You keep adequate records of your work;
- Fee notes are sent out in good time and adequate records of fees are kept; and
- You are able to identify and take notice of all relevant guidance in relation to changes issued by the Bar Council.

Rule 1.12

The Exemption Committee is responsible for considering applications for exemption. A decision of the Exemption Committee may be appealed to the full Bar Council. There will be no further appeal from a decision of the Bar Council and its determination will be final.

Should an exemption be granted, it will be valid until the end of the current Exemption year, i.e. the 31 December of the year the exemption was granted.. Subsequent exemptions will only be considered on further application.

If an exemption is granted with restrictions imposed, any breach of the restrictions will be referred to the Professional Conduct Committee.

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EXEMPTION GUIDANCE NOTES

APPENDIX 1

(As revised September 2017)

Prospective applicants for exemption are asked to consider the following information, in addition to the main Exemption Guidance Notes, before deciding whether or not to apply for exemption from Bar Library Membership or, if they have decided to apply for exemption, in the course of completing their exemption application.

This information should be read in conjunction with the list of Core Resources, drafted and revised from time to time by the Member Services Committee, that every barrister running a practice in Northern Ireland is expected to have.

Many applicants for exemption cite Membership of Queen's University Library, Membership of an Inn in London or External Membership of the Law Library in Dublin in support of the requirement to satisfy the criterion that he or she:

“has access to adequate library facilities, which are defined as facilities commensurate with those available to members of the Bar Library”¹

Whilst the Exemption Committee will look at each application individually, an applicant should consider that it is unlikely that having such membership of any of these facilities will be deemed, of itself, to satisfy the above criterion. The reasoning for this approach, after careful consideration of the nature of what such membership actually provides, is set out below:

1. Associate Membership of Queen's University Library

LexisNexis Library

An associate member has no access to the LexisNexis Library, as the terms of the relevant licence dictate that it is only available to staff and students, i.e it cannot be used for commercial purposes.

Westlaw UK

An associate member also has no access to Westlaw UK and the terms of the relevant licence forbid its use by any person other than subscriber students and subscriber staff.

¹ Rule 1.11(ii), Code of Conduct of the Bar of Northern Ireland.

Barry Valentine's All the Law of Northern Ireland

No subscription.

Hard Copy Practitioner Texts

The Acquisitions Policy of QUB Library is to buy only to support current teaching and research, rather than to support a general law or practitioner Library. In recent years QUB Library has not purchased current editions of what the Bar Library would consider as core texts for specific practice areas. For example:

- The most recent edition of Blackstone's Criminal Practice is 2010;
- The most recent edition of Archbold is 2013 (as access to it is now through Westlaw which is not available to Associate Members);
- It does not take Wilkinson's Road Traffic Law;
- It does not take Duckworth on Matrimonial Law;
- It does not take Charlesworth and Percy on Negligence; and
- It does not take Clerk and Lindsell on Tort.

Please note that if an applicant decides to take associate membership of QUB Library to assist in evidencing access to other hard copy resources, s/he must purchase Professional Associate Membership as Personal Associate Membership does not allow use of the facility for commercial purposes.

2. Membership of a London Inn

Distance Services offered by the Inns of London

It is understood that:

"The distance service is a supplementary service to assist members based outside of London and unable to visit the Library. It is not intended as a substitute for the main Library facility. Provincial barristers will generally also have access at least to a Chamber's Library.

The [named] Inn Library is in no way commensurate with the extensive facilities offered by the NI Bar library"²

LexisNexis

There is no personal remote access to LexisNexis for any member of an Inn, as that would breach the licences of the Inn. Accordingly, there is no out of hours access. As part of the distance (document delivery) service staff will search for named items and send pdfs and scans but will not undertake general research for members. This

² Correspondence of 11 July 2013 to the Bar Library Librarian from a Librarian of an Inn in London.

greatly reduces the scope for use of the resource for legal research and current awareness.

Westlaw UK

Again, there is no personal remote access to LexisNexis for any member of an Inn as that would breach the licences of the Inn. As part of the distance (document delivery)

service staff will search for named items and send pdfs and scans but will not undertake general research for members. The same issues arise, therefore, as in relation to LexisNexis.

Hard Copy Practitioner Texts

The Inn does carry core text books. However, membership of an Inn does not confer borrowing rights. Staff will not consult the texts on behalf of remote users. Staff may send photocopies of particular named sections but only subject to copyright restrictions.

3. External Membership of the Law Library in Dublin

Section 17 of the Rules of Membership state:

“... External membership shall entitle the external member to occasional use of the facilities of the Law Library to such extent as may be determined from time to time at the discretion of the Library Committee....”³

Use of the Law Library is therefore intended only to be ‘occasional’. In addition, proof would be required of what facilities the applicant is permitted by the Library Committee to use.

Document Delivery Service

There is no document delivery service available to external members.

LexisNexis and Westlaw UK.

Even full Members of the Law Library in Dublin do not have automatic remote access to online databases. A separate IT licence must be bought and paid for by full members to allow access, and this privilege is not available to external members.

³ Rules of Membership of the Law Library, Dublin last amended July 2013

Hard Copy Texts

External Members do not have borrowing rights except by individual application; and only in certain circumstances borrowing rights may be granted on a limited basis.

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