

## ANNEX 17

# Pro bono

## Introduction

Lawyers acting pro bono – ‘for the public good’, providing their services voluntarily, without payment – already make a significant contribution to access to justice.

Pro bono can certainly make a contribution to the delivery model in Chapter 5 of our report, but the Low Commission has been warned in a number of submissions and in meetings with LawWorks, the Bar Pro Bono Unit and pro bono co-ordinators that we should not rely too heavily on pro bono as part of our delivery model and that it is unrealistic to expect pro bono to replace legal aid.

The Law Society’s annual assessment of pro bono activity records a substantial number of pro bono hours, but only a small proportion of these hours is likely to be devoted to social welfare law. DLA Piper LLP in their submission estimated that only ten per cent of their annual total of pro bono hours in the UK was devoted to delivering and facilitating face-to-face advice and providing strategic advice to advice organisations. The remainder of their pro bono capacity is directed to supporting charities, not-for-profit organisations and non-governmental organisations (NGOs) and to work in other jurisdictions where need was even greater than here. They considered that these statistics would be similar within other large international firms, and indeed a joint submission to the Low Commission from eight of the largest commercial law firms in the City of London made a similar point and concluded that they saw no realistic chance of this increasing in the foreseeable future. In addition, they considered that it was not the responsibility of the profession to compensate for the loss of legally aided provision and that the areas of social welfare law that are now out of legal aid scope are specialist areas that cannot be replaced by pro bono advice, a point echoed in the submission from Hogan Lovells LLP and in the LawWorks *Pro bono survey 2012* which found that: ‘There is widespread concern about the impact of [the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012] but almost no planning or appetite for moving into new areas of pro bono work to fill the gaps’.<sup>1</sup>

All our pro bono respondents pointed out that the Ministry of Justice’s (MoJ’s) original decision to exclude areas of social welfare law from legal aid was based

---

<sup>1</sup> See page 3; available at: [www.lawworks.org.uk/tmp\\_downloads/j82a71x11v58u76m9e134a89l38e87n102e130u58v57k103/lawworks-pro-bono-survey-report-2012-final.pdf](http://www.lawworks.org.uk/tmp_downloads/j82a71x11v58u76m9e134a89l38e87n102e130u58v57k103/lawworks-pro-bono-survey-report-2012-final.pdf).

on the false premise that: ‘Where there are alternative forms of advice and assistance in a particular area of law and there is no reason to believe that these will cease to be available, we consider that it is proper to take them into account in deciding how high a priority should be accorded to the provision of publicly funded legal advice and representation in that area of law.’<sup>2</sup> In fact the impact of the government’s successive spending reviews on local authorities has meant cuts to many local advice services so that these services are no longer available or are severely reduced.

This has a critical impact on the delivery of pro bono help in social welfare law, as pro bono services can only operate if there is an underpinning infrastructure – this has traditionally been provided by advice agencies and through pro bono clinics. It can also be through telephone or local contact with specialist advice providers or specialists who look after the whole needs of people with particular problems, such as the National Autistic Society. Cuts in local authority funding as well as cuts in legal aid are threatening this infrastructure which provides not just triage of, and access to, clients, but also expertise, support and training for City lawyers operating in areas of law outside their normal day-to-day work.

So the closure of Law Centres and community advice centres, and indeed even their retrenchment in some cases, not only reduces the legal services delivered by the centres themselves but also the potential for pro bono to play a part. In addition, small high street firms may find it impossible to survive, thus resulting in the loss of another important and contributor of unpaid – pro bono – legal help, recognised by the then President of the Law Society, Lucy Scott-Moncrieff, in the LAG annual lecture 2012.<sup>3</sup>

### Loss of expertise

At the same time there is the risk of loss of crucial expertise in the areas of law that are no longer within scope of legal aid. Until now, public funding for advice on welfare benefits, wider housing work, community care, employment and immigration has meant that lawyers are constantly working in these complex areas, keeping up to date and taking on cases pro bono as well as their day-to-day publicly funded work. A recent survey showed that these specialist practitioners were among those most likely to be made redundant as a result of the cuts.<sup>4</sup> There is also the inestimable value of the regular updates which have

---

2 *Proposals for the reform of legal aid in England and Wales*, Ministry of Justice, Consultation Paper CP12/10, November 2010, available at: [www.official-documents.gov.uk/document/cm79/7967/7967.pdf](http://www.official-documents.gov.uk/document/cm79/7967/7967.pdf).

3 ‘Where do we go from here?’, LAG annual lecture 2012, given by Lucy Scott-Moncrieff, then President of the Law Society, London, December 2012, available at: [www.lag.org.uk/magazine/2013/02/where-do-we-go-from-here.aspx](http://www.lag.org.uk/magazine/2013/02/where-do-we-go-from-here.aspx).

4 *The state of the sector: the impact of cuts to civil legal aid on practitioners and their clients*, University of Warwick Centre for Human Rights in Practice and iLegal, 2013.

long featured in *Legal Action*, compiled by leading specialists in social welfare law, which ensure that all practitioners are kept up to date.

We have been warned that this expertise risks dilution or even extinction, as lawyers necessarily have to transfer their practice to other areas of law still within scope or to privately funded work. Such a situation requires a strategic response and Lucy Scott-Moncrieff, then President of the Law Society, set out one possible approach in her LAG annual lecture 2012. She suggested that the big City firms who do so much excellent pro bono work might take on the responsibility for funding third-tier expert work in each of the LASPO cuts areas, in a way that would underpin the work that their staff lawyers do pro bono in clinics.

## **LawWorks and Bar Pro Bono Unit**

This infrastructure of access to clients and expertise is also supported by the two main clearing-house organisations, LawWorks and the Bar Pro Bono Unit (BPBU), which act as essential brokers in arranging advice and mediation for individuals and, most importantly, for not-for-profit organisations and charities.

### **LawWorks**

LawWorks (the Solicitors Pro Bono Group) is the country's leading brokerage, consultancy and clearing-house for domestic pro bono activity engaging solicitors, in-house counsel and also law students and mediators. The charity has been operational since 1997, is based on the National Pro Bono Centre in Chancery Lane and runs a range of pro bono services through which its member law firms and legal teams volunteer. These include: casework brokerage for individuals and community groups; mediation; a network of free legal advice clinics; email advice (see below); opportunities for unemployed and retired lawyers; advocacy opportunities, and a range of other projects.

LawWorks's view is that the provision of pro bono casework for individuals is an exceedingly rare resource which needs to be accessed only when no other way forward is possible. LawWorks operates a helpline which will direct applicants to clinics, to other advice agencies and to toolkits and factsheets before considering an application for casework, which is itself carefully reviewed for financial and legal merit before attempts are made to place it. The vast majority of LawWorks member firms will prefer to provide in-depth casework for charities rather than individuals for a range of reasons, including impact, the nature of the cases and the areas of law involved. Litigation for individuals is also very time-consuming and an approach that seeks to unbundle work into smaller segments faces regulatory and insurance challenges.

The legal profession remains very London-centric and the larger firms are, for practical reasons, the easiest area of engagement for LawWorks. However, LawWorks is a national charity and an important focus at the moment is

strengthening its presence in the regions. A network of legal advice clinics, currently numbering over 130, is likely to be the focus of these efforts and is the method by which pro bono services are provided to the greatest number of individuals (currently in the region of 35,000 pa). It is important to stress that adding significantly to the number of clinics outside London and to the number of cases brokered locally outside London will require (in addition to support by a profession under strain) additional investment in the infrastructure of LawWorks. It is expected that pro bono activity in Wales will increase incrementally as a result of two project officers on location funded for three years from 2013 by the Big Lottery Fund. However, these are currently the only salaried LawWorks personnel outside London.

### **Bar Pro Bono Unit**

The BPBU is the England and Wales clearing-house for advice and representation from barristers. Over 3,000 barristers – at all levels of seniority and of every specialism and from across the countries – have registered on the BPBU’s panel. After a review of merits, means and scale of pro bono assistance, a matter will be allocated for advice on merits or representation at a hearing. The BPBU, and thus the Bar, also works closely with LawWorks, and thus the solicitors’ profession, and also with the Chartered Institute of Legal Executives (CILEX) through a joint pro bono scheme named JIB (Joint ILEX Pro Bono Forum and Bar Pro Bono Unit Scheme), in which legal executives and barristers both make contributions to a pro bono case.

Impressive though this commitment to access to justice is, the BPBU is the first to emphasise that it cannot possibly meet the need left by the withdrawal of legal aid. The clear statement, agreed for many years and used by all, including every political party, that pro bono could only ever be an adjunct to, and never be a substitute for, a proper system of publicly funded access to justice, remains, and always will remain, true.

The BPBU strives to play a part in an efficient way, and one that is co-ordinated with other agencies. Indeed the BPBU’s system depends on a strong frontline of advice agencies and others to refer appropriate cases; yet that frontline has itself been weakened. More and more referrals to the BPBU now come from MPs’ surgeries. Overall, early figures show that the demand for the BPBU’s help has increased by 30 per cent since the LASPO Act came into force. Quite apart from the availability of legal resources without charge, the added administrative challenge and cost is also obvious (the BPBU, based with LawWorks and others

---

5 *Access to justice for litigants in person (or self-represented litigants). A report and series of recommendations to the Lord Chancellor and to the Lord Chief Justice*, Civil Justice Council, November 2011, available at: [www.judiciary.gov.uk/JCO%2FDocuments%2FCJC%2FPublications%2FCJC+papers%2FCivil+Justice+Council+-+Report+on+Access+to+Justice+for+Litigants+in+Person+%28or+self-represented+lit.](http://www.judiciary.gov.uk/JCO%2FDocuments%2FCJC%2FPublications%2FCJC+papers%2FCivil+Justice+Council+-+Report+on+Access+to+Justice+for+Litigants+in+Person+%28or+self-represented+lit.)

at the National Pro Bono Centre, raises the costs of its own administration from the Bar and those closely involved with the Bar).

### **Outlook**

Neither the BPBU nor anyone else in the pro bono sector is standing still. Preparations have been in hand in line with the call from the Civil Justice Council in its November 2011 report. New initiatives are being developed, including as a recent example the BPBU's involvement with LawWorks, Royal Courts of Justice (RCJ) Advice Bureau and the Personal Support Unit (PSU) to offer a duty pro bono advocacy scheme in the Queen's Bench Division Interim Applications Court with the encouragement of the President of the Queen's Bench Division and the judge in charge of that court.

### **Role of new technology**

DLA Piper LLP has drawn our attention to the possibilities that new technology may be able to offer in the provision of pro bono services, through advice by telephone, video conferencing and online which not only saves time for lawyers but enables access by those who might be unable to access a law clinic and in extending the reach of pro bono beyond large city centres.

LawWorks' Free Law Direct is a web-based project which provides initial legal advice in response to relatively straightforward questions. It is designed to assist not-for-profit organisations and individuals who cannot afford to pay for legal advice. Questions and answers are submitted online, via a website run by LawWorks. Once a not-for-profit organisation or advice agency has registered and been approved to use the system, they are able to post queries which are checked by LawWorks, before becoming visible to participating volunteer lawyers. Volunteer lawyers follow different legal areas (much like following someone on Twitter), and are sent a notification when a query has been posted in their area. They can then log on, view the query, and provide an answer. Once a query has been answered, it is relayed to the organisation that raised the question. The project's attractions include the fact that advice can be given quickly, briefly and anonymously (avoiding the need for conflict checks), insurance is provided by LawWorks and lawyers are able to volunteer in a quick and flexible manner.

LawWorks is working to deploy the project in partnership with other services and other projects to maximise impact. Recent examples include a pilot with the PSU, through which volunteers assisting litigants in person at court were able to submit questions on behalf of applicants. Currently, pilot work suggests there may be challenges to using the programme to assist individuals directly, where there are no trained personnel able to support the placing of questions and understanding of responses. LawWorks is particularly interested in using the system to provide remote support to legal advice clinics.

Another recent important innovation is the use of Skype in legal advice clinics. This is currently being trialled in a LawWorks clinic at Brent CAB, through a partnership with Clyde & Co LLP and BPP Law School, and which LawWorks hope to roll out extensively, particularly in hard-to-reach areas.

### **Public legal education**

Lawyers acting pro bono also play an important role in providing public legal education (PLE). This was recognised by the Attorney-General establishing a Pro Bono PLE Working Group chaired by Mike Napier, the Attorney's pro bono envoy. The group concluded that 'it is of fundamental importance to the future of PLE that the citizenship part of the national curriculum should include learning about legal rights and responsibilities. In this crucial "early learning" area the Citizenship Foundation and other PLE/pro bono organisations have the expertise, skills and materials to deliver the necessary teaching in all schools' (para 5).<sup>6</sup> They recommended that pro bono PLE efforts should concentrate on those areas hardest hit by the LASPO cuts in legal aid: family, housing, debt, employment and criminal justice.

They further recommended that 'the MOJ and Department for Education should take the lead in developing a forum for cross departmental liaison on PLE, along the same lines as the Justice Assistance Network (JAN) which is chaired by the Ministry of Justice and promotes valuable inter-departmental co-ordination and mutual awareness of international pro bono projects' (para 7). Finally, they recommend that Law for Life, the not-for-profit organisation for PLE, should be responsible for co-ordination.

### **Law students**

Students are an important resource for pro bono work. The attraction of clinical legal education in providing access to clients, together with the significance of work experience and evidence of 'employability' at the undergraduate and graduate stages mean that there are generally more students interested in undertaking pro bono work than there are opportunities; further, the location of law schools all around the country make students an important regional resource. LawWorks has run a dedicated student service since 2006. Surveys of university law schools and graduate law faculties show that in 2010, 91 per cent of responding institutions were providing a pro bono programme. Extrapolating against a total national figure of law schools, this indicates an actual figure in the region of 65 per cent, up from 46 per cent in 2006. In 2010, 6,258 students were involved in pro bono work. Almost all pro bono opportunities, however,

---

<sup>6</sup> Attorney-General's pro bono co-ordinating committee, Public Legal Education Working Group, 2013.

are extra-curricular and resources are limited, with particular challenges around the provision of sufficient supervision. There is speculation that this may change with the need to justify the rise in tuition fees. Exemplars in current provision include Northumbria University, which has a large number of qualified and practising solicitors on staff, who supervise a significant number of clinic sessions with advisory skills built into the course.

LawWorks (in conjunction with Queen Mary University of London School of Law) runs the website [www.studentprobono.net](http://www.studentprobono.net) to support a network of students, who are generally interested in making their time available across a range of voluntary activities, including front-of-house and triage services at clinics, with the benefit of making services more efficient and effective for practising lawyers.

In addition to the need for qualified supervision and an infrastructure to support pro bono work by students, it needs to be borne in mind that students are a transient work force who are not available for large periods during the year, including holidays and exam times. Lastly, with some exceptions (including, in addition to Northumbria Law School – above – and the Free Representation Unit), student contributions are generally focused on advice, rather than representation at hearings.