

Pro Bono Practices and Opportunities in England and Wales

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

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Pro bono legal services are of ever-increasing importance for attorneys and law firms within England and Wales. Although such efforts are not as widespread as in the United States, various organizations and institutions within England and Wales have fostered and developed *pro bono* activity in the legal field, and significant strides continue to be made year after year. Research for the 12 months prior to June 2009 estimates that £399 million worth of *pro bono* legal services were provided by private practice attorneys, approximately 2% of the profession's gross fees for 2008.¹ While many attorneys provide *pro bono* legal services because of a personal desire to help people, law firms in England and Wales are becoming increasingly aware of the value their existing and prospective clients place on a firm's *pro bono* activities. This may include taking *pro bono* involvement into consideration when such clients select their own legal advisers.

I. *Legal Services and the Legal Profession in England and Wales*

An awareness of the structure of the English legal system is necessary for an understanding of its *pro bono* practices. The legal profession is comprised of two types of lawyers: solicitors and barristers. Solicitors are regulated and represented by the Law Society and provide advice on everyday matters, from drafting wills to completing commercial transactions.² Barristers, who are governed by the Bar Council, are generally more specialized. Their predominant functions are to advise clients on the strengths and weaknesses of their cases and act as courtroom advocates. One of the primary differences between solicitors and barristers is the public's access to them. Whereas solicitors have direct contact with the public, barristers are generally reached only through solicitors.

A. Legal Aid

One explanation why England and Wales have a less robust *pro bono* system than the U.S. is a system of legal aid which uses public funds to help those in need of legal services. This mostly covers criminal matters but extends to civil cases as well. The legal aid system was first established under the Legal Aid and Advice Act of 1949.³ In 2000, the Legal Services Commission (the "LSC") became the body responsible for the administration of legal aid under the Access to Justice Act of 1999. The LSC operates the Community Legal Service ("CLS") for civil cases and the Criminal Defence Service ("CDS") for criminal cases.⁴ On the criminal side, the CDS was established in 2001 and allows for solicitors' firms to offer advice, assistance, and magistrate court representation under contract. In 2001, the LSC also launched the Public Defender Service ("PDS"), which directly employs solicitors to provide criminal defense services to the public.

The LSC is responsible for coordinating the resources and funds available for civil legal assistance in accordance with the Funding Code.⁵ Changes to the Code from 2010 include a

¹ Catherine Baksi, "Lawyers provide £400m of pro bono work a year," *Law Society Gazette*, Nov. 5, 2009.

² See *The Role of Solicitors in England and Wales*, The Law Society, available at: <http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/roleengwal.law>.

³ See *The Story of Legal Aid*, Legal Services Commission, available at: http://www.legalservices.gov.uk/public/the_story_of_legal_aid.asp.

⁴ See *About our legal aid schemes*, Legal Services Commission, available at: http://www.legalservices.gov.uk/public/about_our_schemes.asp.

⁵ See *What cases do we fund ?* Legal Services Commission, available at: http://www.legalservices.gov.co.uk/civil/what_cases_do_we_fund.asp.

movement towards paying for immigration and asylum work retrospectively rather than through interim payments, which has in some instances led to lawyers having to abandon work for vulnerable clients.⁶ The overall legal aid budget of £2.2 billion is also expected to be cut by several hundred million pounds as part of cutbacks at the Ministry of Justice, with civil legal aid expected to bear most of the reductions.⁷

Demand for civil legal aid has risen sharply as a result of the recent economic crisis.⁸ It is increasingly apparent that the public legal aid system does not adequately meet the demand for legal services, something only likely to be exacerbated by the implementation of the 2010 changes, particularly in civil cases.⁹ *Pro bono* services are increasingly required to help fill this gap. Furthermore, legal aid in England and Wales is only available to individuals. Legal advice to charitable organizations must be delivered by the legal profession *pro bono* and on an ad hoc basis.

B. Advice Agencies

Within England and Wales there is a national network of advice agencies staffed primarily by volunteers. The two most prominent are the Citizens Advice Bureau Service (the “CABx”) and the Law Centres Federation. CABx is a charity that provides free advice to the public on topics that include legal matters. Advisers help clients fill out forms, write letters, negotiate with creditors, and also represent them in courts or tribunals.¹⁰ CABx’s bureaus, located throughout England and Wales, are able to give advice on where to obtain legal services and often provide legal advice themselves. CABx is funded mainly by government and local authority grants but also by corporations and charitable trusts.

The Law Centres Federation is the governing body for the Law Centres, and its mission is to promote publicly funded legal services, mainly through the Law Centres.¹¹ Law Centres provide free legal advice to needy individuals within the center’s coverage area. These services are targeted for the poor and most disadvantaged members of society. The Law Centres give legal advice on multiple subjects, provide education and information on the law and individual rights, and lobby for improvements to existing laws. Funding for the Law Centres comes mainly from the LSC, but to satisfy increased demand additional funding has been secured from sources including London Councils, the Big Lottery Fund, the European Union and the Equality and Human Rights Commission. Each donor organization funds a specific project, topped up by

⁶ See *BBC Online* Legal aid clients left in limbo after payment changes, *available at*: <http://www.bbc.co.uk/news/uk-10868049>.

⁷ See James Kirkup, “Kenneth Clarke to slash Legal Aid budget,” *Daily Telegraph*, July 16, 2010.

⁸ See Citizens Advice Bureau Need for civil legal aid has soared during recession says Citizens Advice, *available at*: http://www.citizensadvice.org.uk/index/pressoffice/press_index/press_20090710.

⁹ See Lawyers demand review of Legal Aid changes, Channel 4, *available at*: http://www.channel4.com/news/articles/politics/domestic_politics/lawyers+demand+review+of+legal+aid+changes/3746097.

¹⁰ About Us: Citizens Advice Service, Citizens Advice Bureau, *available at*: <http://www.citizensadvice.org.uk/index/aboutus.htm>.

¹¹ The Law Centres Federation is a registered charity and a Company Limited by Guarantee and registered in England and Wales. See *What Does the Law Centres Federation Do?*, Law Centres Federation, *available at*: <http://www.lawcentres.org.uk/>.

annual subscriptions paid by member Law Centres. The Law Centres Federation had a total income for 2008/09 of over £1 million.¹²

II. *Pro Bono Opportunities in England and Wales*

Pro bono legal services have always been provided by barristers, yet until 1997 there was no organization specifically focused on encouraging and structuring *pro bono* activities among solicitors. In 1997, a group of solicitors founded the Solicitors *Pro Bono* Group (“SPBG”). SPBG is a registered charity whose mission is “to support, promote and encourage a commitment to *pro bono* across the solicitors’ profession.”¹³ SPBG does not take on *pro bono* cases itself but instead acts as a resource for those seeking *pro bono* services or seeking to become involved in *pro bono* activities.

LawWorks is the operating name of SPBG. LawWorks was originally a joint operation between SPBG and Law Centres. The aim was to connect those solicitors wanting to provide *pro bono* legal services with clinics or agencies offering such services.¹⁴ LawWorks also runs the LawWorks for Community Groups project which acts as a direct clearinghouse for legal projects, matching those in need of legal services (generally non-profit organizations) with law firms or larger companies’ in-house legal departments.¹⁵ Members of the LawWorks for Community Groups project provide advice on issues relating to matters as diverse as property, charity, corporate matters, finance, employment, intellectual property, and information technology.

Other projects run by LawWorks include LawWorks Mediation and LawWorks Web. LawWorks Mediation provides mediation services for individuals who are clients of an advice agency, *i.e.*, Law Center, CABx, or a member of the Bar *Pro Bono* Unit, and the other party to the dispute.¹⁶ LawWorks Web is a project sponsored by the Department of Constitutional Affairs and the Active Community Unit of the Home Office and provides legal advice via the internet.¹⁷ There are two types of resources available: Initial Electronic Advice and In-Depth Assistance. Initial Electronic Advice is geared towards short, finite advice, usually requiring an answer to one legal question. However it is only accessible to the public at advice agencies’ offices. Advice agency representatives forward single questions to an appropriately specialized solicitor before relaying the response back to the client. In-Depth Assistance is also only available through advice agencies. Here, the agency determines whether the person seeking advice is eligible for public legal aid. If not, the person’s case and file are submitted to a senior solicitor for review. The senior solicitor decides whether to accept the case and if so, the client’s case is passed to a solicitor or barrister.

Gaining membership to LawWorks is relatively easy and open to individuals, firms or organizations involved in *pro bono* work. Membership is paid annually and fees vary depending on the type of applicant.

¹² See About the LCF : Funding and Structure, *available at*: <http://www.lawcentres.org.uk/about/detail/structure>.

¹³ Introduction, Solicitors Pro Bono Group, *available at*: <http://lawworks.org.uk/>.

¹⁴ Law Works Clinics, Solicitors Pro Bono Group, *available at*: http://lawworks.org.uk/?id=lw_clinics.

¹⁵ LawWorks for Community Groups, Solicitors Pro Bono Group, *available at*: http://lawworks.org.uk/?id=lw_community_groups.

¹⁶ Mediation Introduction, Solicitors Pro Bono Group, *available at*: <http://lawworks.org.uk/?id=mediation>.

¹⁷ LawWorks Web, Solicitors Pro Bono Group, *available at*: http://lawworks.org.uk/?id=lw_web.

In 2002, various *pro bono* groups launched the first “National *Pro Bono* Week” to encourage lawyers to become involved with *pro bono*, to link the legal profession with various non-governmental organizations (“NGOs”), and to allow those organizations to publicize their legal needs.

The eighth annual “National *Pro Bono* Week” took place between November 9th and 14th in 2009 and included a variety of workshops, forums and seminars, as well as the first ever two-day “Joint National *Pro Bono* Conference” split between London and Manchester.¹⁸ The initiative has grown significantly since 2002, and now enjoys the support and sponsorship of many of the top law firms in the U.K. The 2009 event focused particularly on helping those affected by the economic downturn, while the 2010 edition will turn its attention to students.¹⁹

A. Bar *Pro Bono* Unit and Bar Council Programs

The Bar Pro Bono Unit (“PBU”) is a registered charity, established in 1996 to provide *pro bono* legal advice and representation to individuals who are unable to obtain it privately or through legal aid. Besides advising on the law, PBU provides representation in any court or tribunal in England or Wales and assists with mediation. There are over 2,000 barristers who offer their services through PBU, encompassing virtually every area of the law. In determining which cases to accept, PBU assesses whether the matter requires a barrister (who may act without a solicitor where none is necessary), the legal merits of the case, whether the applicant can reasonably obtain legal services elsewhere (such as legal aid or paying privately), and whether the work will take longer than three days.²⁰

Barristers wishing to volunteer for PBU must be willing to assist with cases for a minimum of three days per year. Additionally, PBU asks that barristers make the same effort and apply the same level of commitment to its *pro bono* cases as to their paid work. PBU has also developed a panel of firms that provide solicitors’ services where needed. For professional, insurance and practical reasons, solicitors joining the panel may only do so through their firm. Once the firm has joined, any solicitor at that firm is permitted to join the Unit’s panel. However, due to the nature of the cases taken on by PBU, solicitors are rarely called upon. PBU is funded solely by donations and does not require a membership fee.²¹

In addition, the Bar Council has a registered charity, named Bar in the Community (“BIC”). BIC encourages volunteering by barristers, other legal professionals and law students; under this initiative volunteers serve on management committees of various voluntary organizations. Barristers use the skills they have learned in the profession to give back to the community in a managerial role, rather than providing legal advice per se.

B. Free Representation Unit

The Free Representation Unit (“FRU”) is a registered charity providing *pro bono* legal advice. It prepares cases and provides representation at tribunals in matters such as employment, social security and criminal injury compensation. FRU is based chiefly in Greater London.

¹⁸ See *National Pro Bono Week 2009*, Law Works, available at: http://www.lawworks.org.uk/?id=lw_mediation.

¹⁹ See *National Pro Bono Week 2010*, Law Works, available at: <http://www.lawworks.org.uk/?id=580>.

²⁰ See Advice Agencies & Solicitors: Applying for help, Bar Pro Bono Unit, available at: <http://www.barprobono.org.uk/?cID=6>.

²¹ See How to Help: Donations, Bar Pro Bono Unit at <http://www.barprobono.org.uk/?cID=donations>.

Services are provided to those who cannot obtain them privately or through legal aid.²² FRU was established in 1972 and continues to play a leading role in the *pro bono* community. FRU can only be accessed by members of the public through a referral by an agency such as Citizens Advice Bureau, Law Centres, or firms of solicitors. FRU's volunteers are law students and legal professionals in the early stages of their career (including pupil barristers, trainee solicitors and newly qualified lawyers). All will be trained by FRU and cannot take on cases until they have the appropriate experience. FRU provided representation for 1,011 cases in the year to March 31, 2009, with some 465 volunteers involved.²³

C. Business in the Community

Business in the Community ("BITC") is a business-led charity with over 800 member companies and 17.8 million staff employed worldwide, including many of the top London law firms. In addition, a 3,000 other companies are engaged through BITC's programs and campaigns. BITC aims to encourage businesses to make a positive contribution to society to help ensure a sustainable future for people and planet.²⁴ Law firms often get involved in ways other than providing of legal advice, such as offering mentoring services, helping out in schools or community centers, or partaking in local urban regeneration programs. The programs offered by ProHelp afford member firms' employees the opportunity to aid those in need within their community as well as gain valuable experience and improve communication skills.

D. Other Organizations and Opportunities

There are other organizations offering *pro bono* services in different areas or on a smaller scale. For example, Liberty (also known as the National Council for Civil Liberties) is an organization focusing on human rights and civil liberties, and has been active in these areas since 1934. Liberty's activities include lobbying Parliament, challenging unjust laws through test cases at the national and European Union level, public campaigning, undertaking research, writing reports on civil liberties and human rights issues, and providing advice and information.

Information regarding these types of organizations and other *pro bono* opportunities can be found on the website "ProBonoUK.net," launched in May 2002 by the Attorney General's *Pro Bono* Committee. ProBonoUK.net Limited was formed in 2003 as a registered charity to establish, run and develop the website. The members of the Attorney General's *Pro Bono* Committee established the website at the request of various *pro bono* groups in order to coordinate *pro bono* activities and provide a resource for those interested in *pro bono* work.²⁵

E. Initiatives for Students

Students in England and Wales are able to get involved with *pro bono* work through universities, law schools, and organizations such as LawWorks. Several law schools and universities have established *pro bono* centers and clinics where students have the opportunity to participate directly in *pro bono* work. BPP Law School is one example, having by September

²² For further information see: <http://www.thefru.org.uk/>.

²³ See FRU's Annual Report 2009, available at: <http://www.thefru.org.uk/annual-reports>.

²⁴ BITC, About, available at: http://www.bitc.org.uk/about_bitc/index.html.

²⁵ Further information is available at: <http://www.probonouk.net/index.php?id=about>.

2010 set up five centers within England and Wales providing legal information, advice and assistance to members of the public.²⁶

LawWorks' student initiative provides information for students on *pro bono* opportunities and seeks to encourage involvement by offering guidance on *pro bono* projects.²⁷ Several English law firms assist in managing this initiative. Other organizations, such as FRU (see Section B, above), also provide students with *pro bono* opportunities.

III. Conclusion

Pro bono legal work continues to gain importance in England and Wales. In 2007, in acknowledgment of National *Pro Bono* Week, both the Prime Minister Gordon Brown and Prince Charles HRH the Prince of Wales sent messages of support and encouragement to the legal profession and praised those who give their time to *pro bono* activities. Many organizations are expanding their efforts to promote *pro bono* access, thereby creating opportunities for both individuals and firms to become involved. It is evident that the amount of *pro bono* work undertaken within the English legal structure has grown tremendously in previous years and will continue to grow in the coming years.

²⁶ Further information is available at: <http://www.bpplawschool.com/probono/index.htm>.

²⁷ Further information is available at: <http://www.lawworks.org.uk/?id=students>.