



Pro Bono Practices and Opportunities in England & Wales

INTRODUCTION

Pro bono legal services are of increasing importance for attorneys and law firms within England and Wales. There has been a growing commitment by the legal profession to the importance of pro bono legal services, and various organizations and institutions within England and Wales continue to work to foster and develop pro bono legal activity. The estimated value of pro bono work provided by private practice attorneys in 2014 was £601 million, an increase of 13.83% from 2013.¹ While individual attorneys provide pro bono legal services at least in part because of a personal desire to help people, law firms in England and Wales are also becoming increasingly aware of the value their existing and prospective clients may place on a firm's pro bono activities.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

England and Wales is part of the United Kingdom of Great Britain and Northern Ireland (“UK”). The four principal sources of UK law are legislation (primarily Acts of Parliament), common law, European Union law and the European Convention on Human Rights.

The Courts

The court system in England and Wales is divided into criminal and civil divisions as established by the Judicature Acts passed in the 1870s. The court system is also split into superior and subordinate courts. The subordinate courts include the Magistrates' Court (which hears minor criminal cases), the Family Proceedings Court, the Youth Court and the County Courts (which have a purely civil jurisdiction). There are also small claims courts that have jurisdiction over private disputes in which large amounts of money are not at stake. The routine collection of small debts forms a large portion of the cases brought to small-claims courts, as well as evictions and other disputes between landlords and tenants.

The Crown Court is a criminal court of both original and appellate jurisdiction that also handles a limited number of civil cases both at first instance and on appeal. There are 91 locations in England and Wales at which the Crown Court regularly sits. The High Court of Justice functions both as a civil court of first instance and a criminal and civil appellate court for cases from the subordinate courts. It consists of three divisions: the Queen's Bench, the Chancery and the Family divisions. The High Court of Justice is based at the Royal Courts of Justice on the Strand in the City of Westminster, London (the “**Royal Courts of Justice**”). It has district registries across England and Wales and almost all High Court proceedings may be issued and heard at a district registry.

The Court of Appeal, located at the Royal Courts of Justice, deals only with appeals from other courts or tribunals, and is divided into the Civil Division, which hears appeals from the High Court and County Court and the Criminal Division, which hears appeals from the Crown Court connected with a trial of indictment. The Supreme Court (formerly the House of Lords) is the highest appeal court and is housed in Middlesex Guildhall in the City of Westminster.

Most judges are appointed. Since April 2006, judicial appointments have been the responsibility of an independent Judicial Appointments Commission (the “**Commission**”). All appointments are made by open competition as part of a more transparent process for appointing judges than previously existed. The Commission recommends candidates to the Lord Chancellor, who has a very limited power of veto.

¹ See THE LAW SOCIETY, The pro bono work of solicitors: PC Holder Survey 2014.



The Practice of Law

The legal profession is comprised of solicitors and barristers.

Education

Solicitors²

There are a number of routes via which to qualify to practise as a solicitor in England and Wales. Applicants either need to: (i) obtain a law degree, complete the Legal Practice Course to develop skills needed to work in a firm (the “LPC”), work for two years as a trainee solicitor in a firm or other organization authorized to take trainees (the “Training Contract”), and complete the Professional Skills Course to build on the vocational training provided in the LPC (the “PSC”); (ii) obtain a degree in a subject other than law, complete the Common Professional Examination/Graduate Diploma in Law, then complete the LPC, the Training Contract and the PSC; or (iii) if an applicant already works in a legal office, join the Chartered Institute of Legal Executives (“CILEx”), which is the governing body for chartered legal executives and pass certain examinations required by CILEx before completing the PSC.

Barristers³

The initial stages of qualifying as a barrister are identical to becoming a solicitor – either an applicant obtains a law degree, or obtains a degree that is not in law and completes the Common Professional Examination/Graduate Diploma in Law. Following completion of these steps, an applicant needs to pass the Bar Professional Training Course (“BPTC”), a course designed to ensure that students intending to become barristers acquire the skills, knowledge and competence to prepare them, in particular, for the more specialised training in the following 12 months of “pupillage.” Pupillage is the final stage of qualification as a barrister, in which the pupil barrister gains practical training under the supervision of an experienced barrister. Pupillage is divided into two parts: a non-practising six months and a practising six months.

Licensure

The Role of Barristers

Barristers are less likely to provide generalist legal advice and are generally more specialized. They act primarily as advocates in litigation. Barristers are generally reached only through solicitors.

The Role of Solicitors

Solicitors provide advice on a wide range of commercial and personal matters, from drafting wills to property conveyancing to completing commercial transactions, though each solicitor is likely to be a specialist in one or two areas of practise. Solicitors may work in private practice; in house in a company or charity; or in the public sector, for a local authority.

The Role of Foreign Lawyers

Foreign lawyers are prohibited from providing advice as to the laws of England and Wales, and must inform potential recipients of legal advice where they are qualified to practice law. To qualify to practice in England and Wales as a solicitor, those who have already qualified as a lawyer overseas must fulfill the requirements of the SRA Qualified Lawyers Transfer Scheme Regulations 2011.

Demographics

Over 167,000 solicitors are qualified to work in England and Wales,⁴ with the number of barristers in 2014 at 15,716⁵.

² See LAW SOCIETY, Routes to qualifying, available at <https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Routes-to-qualifying/> (last visited on September 4, 2015).

³ See BAR STANDARDS BOARD, Qualifying as a barrister <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/> (last visited on September 4, 2015).

⁴ May 2015 figure. See THE SOLICITOR’S REGULATION AUTHORITY: Population of Practising Solicitors From July 2009 to May 2015, available at http://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page (last visited on September 4, 2015).



Legal Regulation of Lawyers

All solicitors are governed by the Law Society and Solicitors Regulatory Authority (the “**SRA**”) under the SRA Practice Framework Rules 2011, which specifies professional duties in carrying out all types of work, including pro bono. The SRA also sets the entry and training requirements for solicitors.

The Bar Standards Board (“**BSB**”) regulates barristers in England and Wales. It is responsible for setting the standards of conduct for barristers, authorising barristers to practise, monitoring the service provided by barristers, setting the education and training requirements for barristers and handling complaints against barristers and taking enforcement or other action where appropriate.⁶

LEGAL AID AND ASSISTANCE

The Right to Legal Assistance

In criminal proceedings, individuals have the right to free legal advice at a police station if called in for questioning. Additionally, persons under 16 years of age (or under 18 and in full time education) or on certain benefits automatically qualify for legal aid. Otherwise, an individual’s ability to receive legal aid depends on the individual meeting certain eligibility requirements.

State-Subsidized Legal Aid - Eligibility Criteria

Legal aid is administered by the Legal Aid Agency (“**LAA**”). Legal aid in England and Wales is only available to individuals for civil and criminal matters under certain circumstances, although legal aid is much more limited scope in respect of the former as a result of recent changes to the legislation governing legal aid. Legal aid is only available to individuals and not to organizations. Eligibility is determined based on whether an applicant’s case meets the “Interests of Justice” Test (broadly, how serious are the consequences of conviction) and whether the applicant passes a financial means test.⁷ Information regarding eligibility is available from the Citizens Advice or Law Centre (outlined below) or by using the legal aid checker on the GOV.UK website.

In Civil Proceedings

Civil cases are handled by the Civil Legal Advice division (“**CLA**”). The UK government website⁸ and the CLA national helpline⁹ maintain a list of solicitors who provide legal aid. Legal aid is available for many types of civil cases, including those involving debt (where a person’s home is at risk), housing, domestic abuse, family problems if a person has been in an abusive relationship, special educational needs, discrimination and issues around a child being taken into care. Notable exceptions include libel, and cases associated with the running of a business.

In Criminal Proceedings

Criminal cases are handled by the Public Defender Service (“**PDS**”) which employs solicitors and barristers to provide criminal defense services to members of the public who have been charged with a crime. Legal aid is available for most types of criminal cases. Notable exceptions include most personal injury cases (which are now dealt with under conditional fee agreements).

⁵ <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/> (last visited on September 4, 2015).

⁶ See <https://www.barstandardsboard.org.uk> (last visited on September 4, 2015).

⁷ For more information concerning eligibility and other factors, see the Gov.UK website at <https://www.gov.uk/work-out-who-qualifies-for-criminal-legal-aid> (last visited on September 4, 2015).

⁸ See <http://find-legal-advice.justice.gov.uk/> (last visited on September 4, 2015).

⁹ See <https://www.gov.uk/civil-legal-advice> (last visited on September 4, 2015).

Unmet Needs and Access Analysis

The legal aid system in England and Wales is one of the most comprehensive and expensive systems of its kind in the world (£39 per person was spent on legal aid compared to around £5 per person in each of Spain, France and Germany).¹⁰ Consequently, the Government has sought to reform legal aid through a series of consultations and proposals which resulted in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“**LAPSO**”), which came into force in April 2013. The aim of the reforms was (i) to ensure legal aid targets the highest priority cases and those in greatest need of legal aid services, (ii) to encourage the use of mediation to resolve disputes (which can be cheaper and faster) and (iii) to introduce price competition in criminal legal aid to ensure value for money.

To reduce the cost and burden on the legal system of certain matters, and to target the highest priority cases, LAPSO has removed from the scope of legal aid coverage certain matters which could be resolved in alternative ways without legal expertise. As a result, the following cases no longer qualify for legal aid: (i) family cases where there is no proof of domestic violence, (ii) forced marriage or child abduction, (iii) immigration cases that do not involve asylum or detention, (iv) housing and debt matters unless they constitute an immediate risk to the home, (v) welfare benefit cases (except appeals to the upper tribunal or high court), (vi) almost all clinical negligence cases (other than where a child has been severely injured during birth or in the first eight weeks of its life), and (vii) employment cases that do not involve human trafficking or a contravention of the Equality Act 2010.

As a consequence of LAPSO, between April 2013 and April 2014, the number of civil cases granted legal aid dropped by 62%. Social welfare and family law have been most affected, with drops of 80% and 60% respectively.¹¹

Additionally, LAPSO’s introduction of price competition in criminal legal aid, combined with government cuts to the legal aid budget, have resulted in solicitors and barristers refusing to take on new legal aid cases.¹² As a result of LAPSO, it is becoming increasingly apparent that the newly reformed public legal aid system does not adequately meet the demand for legal services.

Alternative Dispute Resolution¹³

To assist complainants in resolving their disputes outside court in relation to goods and services, a complainant may consider using an alternative dispute resolution (“**ADR**”) scheme rather than taking court action.

Conciliation, Mediation and Arbitration

In consumer disputes, conciliation is the first stage in the arbitration process and the conciliator is usually a member of the trade association. Any decision is not binding and will not prevent the complainant from taking court action. There is usually no charge for conciliation.

Arbitration is a procedure for settling disputes in which both the complainant and the supplier usually agree to accept the decision of the arbitrator as legally binding. The arbitrator will make a decision based

¹⁰ See <https://www.gov.uk/government/publications/2010-to-2015-government-policy-legal-aid-reform/2010-to-2015-government-policy-legal-aid-reform> (last visited on September 4, 2015).

¹¹ See <http://www.theguardian.com/law/datablog/2014/sep/09/legal-aid-in-england-and-wales-what-is-changing> (last visited on September 4, 2015).

¹² See <http://www.independent.co.uk/news/uk/home-news/criminal-courts-across-england-and-wales-could-grind-to-a-halt-as-lawyers-protest-legal-aid-cuts-10346409.html> (last visited on September 4, 2015).

¹³ See <https://www.citizensadvice.org.uk/Documents/Advice%20factsheets/Consumer%20Affairs/c-alternative-dispute-resolution.pdf> (last visited on September 4, 2015) and https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288199/bis-14-575-implementing-alternative-dispute-resolution-directive-and-online-dispute-resolution-regulation-consultation.pdf (last visited on September 4, 2015).



on the written evidence presented by the complainant and the supplier. The complainant will have to pay a registration fee which may be refunded if the complainant is successful.

If a mediation scheme is used, the mediator will help the complainant and the supplier to reach an acceptable agreement and will act as a go-between if the complainant and the supplier do not want to meet.

Ombudsman

Many services have an Ombudsman scheme that the complainant can use. For example, services provided by insurance companies, banks and building societies are all covered by the Financial Ombudsman Service. The complainant will only be able to refer the matter to the Ombudsman after they have completed the supplier's internal complaints procedure. The Ombudsman will make a recommendation or a ruling which is usually accepted by the supplier, but isn't legally binding. Hence the complainant can still take court action if they are not satisfied with the decision. However, the court will take the Ombudsman's ruling into account when deciding the complainant's claim. All the Ombudsman schemes are free.

PRO BONO ASSISTANCE

Pro Bono Opportunities

Private Attorneys, Law Firm and Legal Department Pro Bono Programs

Many solicitors practising privately, whether as individuals or as part of a law firm or company with a legal department, will provide pro bono services alongside their fee paying work. Indeed, the rise of pro bono programs by law firms and legal departments, particularly those with a close connection to the United States, where pro bono is more deeply ingrained as a social and working norm, has been significant in recent years. There is, however, no mandate that solicitors or barristers provide pro bono services.

Non-Governmental Organizations (NGOs)

Free Representation Unit

The Free Representation Unit ("**FRU**") is a registered charity providing pro bono legal advice. The FRU was established in 1972 and continues to play a leading role in the pro bono community. The FRU prepares cases and provides legal advice, case preparation and advocacy in employment, social security and some criminal compensation tribunal cases.¹⁴ The FRU is based chiefly in Greater London (but also has a partnership with Nottingham Law School). The FRU provides services to those who cannot obtain them privately or through legal aid.¹⁵ The FRU can only be accessed by members of the public through a referral by an agency such as Citizens Advice, Law Centres, or firms of solicitors. As of March 31, 2013, the FRU had provided representation for 737 clients in just under 1,000 cases, with some 496 volunteers involved.¹⁶

The FRU is staffed by volunteers who tend to be law students and graduates possessing the minimum qualifications of being an LLB graduate, an LLM student or a GDL student. Social security work may also be undertaken by LLB students in their penultimate year of study. Further, CILEx students (students training to obtain a professional qualification to be a solicitor's clerk) can also volunteer if they have completed their level three diploma. In some cases, persons who do not meet any of these criteria, but

¹⁴ See <http://www.thefru.org.uk/about-fru> (last visited on September 4, 2015).

¹⁵ For further information see <http://www.thefru.org.uk/> (last visited on September 4, 2015).

¹⁶ See FRU's Annual Report 2013, available at <http://www.thefru.org.uk/annual-reports> (last visited on September 4, 2015).



who have practical experience of representing clients in the tribunals that the FRU assists with, may be able to volunteer.¹⁷

National Pro Bono Centre

Since 2010, the National Pro Bono Centre (the “Centre”) has housed LawWorks (described further below), the Bar Pro Bono Unit and CILEx Pro Bono Trust (the pro bono organization staffed by legal executives). It has recently added space for:

- (1) the Access to Justice Foundation, a collaboration between the Bar Council, Chartered Institute of Legal Executives, Law Society and the voluntary sector (represented by Advice Services Alliance), supported by the Judiciary, the Ministry of Justice and the Attorney General's Office, to help in the overall effort to provide practical “access to justice” to those unable to afford help,¹⁸
- (2) London Legal Support Trust which supports law centers and legal advice agencies in London and the South East by providing them with grant funding alongside other forms of support,¹⁹
- (3) the Centre for Criminal Appeals which is a non-profit criminal law practice²⁰
- (4) the Pro Bono Community, a charity that has developed a specialised training program for law students, trainees and junior lawyers aimed at preparing them for volunteering in Law Centres and other advice agencies and
- (5) PILnet which provides lawyers with the tools they need to challenge injustice, strengthen the ability of citizens to shape law and policy and connect a global community of activist lawyers who are using law to advance change.²¹ The Centre is designed to be a hub for pro bono charities, offering end-to-end service for clients through pro bono assistance and referral to a network of partner agencies.²² In 2011, the first legal executives worked with barrister colleagues through the Joint ILEX Pro Bono and Bar Pro Bono Unit (JIB) scheme.

The Centre is a valuable resource for lawyers who are able to refer clients they are unable to assist directly. For pro bono charities, the Centre offers meeting facilities in the heart of the legal community free of charge.

Bar Association Pro Bono Programs

Solicitors Pro Bono Group

In 1997, a group of solicitors founded the Solicitors Pro Bono Group (“SPBG”), a registered charity whose mission is “to increase the delivery of voluntary legal services to clients, individuals and communities in need by encouraging, supporting and facilitating lawyers to do pro bono work.”²³ 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 and is the leading national pro bono charity for solicitors. The aim of LawWorks is to connect solicitors wanting to provide pro bono legal services with clinics or agencies offering such services.²⁴ LawWorks also runs the LawWorks for Community Groups project that

¹⁷ See <http://www.thefru.org.uk/volunteers/are-you-eligible> (last visited on September 4, 2015).

¹⁸ See <http://www.atif.org.uk/about-us.html> (last visited on September 4, 2015).

¹⁹ See <http://www.londonlegalsupporttrust.org.uk/about-us/> (last visited on September 4, 2015).

²⁰ See <http://www.criminalappeals.org.uk> (last visited on September 4, 2015).

²¹ See <http://www.pilnet.org/public-interest-law.html> (last visited on September 4, 2015).

²² See <http://www.nationalprobonocentre.org.uk/about-us> (last visited on September 4, 2015).

²³ See www.probonogroup.org.uk/lawworks/jobs/spbginfo.doc (last visited on September 4, 2015).

²⁴ LAWWORKS SOLICITORS PRO BONO GROUP, Law Works Clinics, available at <http://lawworks.org.uk/clinics> (last visited on September 4, 2015).



acts as a direct clearinghouse for legal projects, matching those in need of legal services (generally non-profit organizations) with law firms or in-house legal departments of large companies.²⁵ Members of the LawWorks for Community Groups project provide advice on issues relating to matters as diverse as property, charity, corporate matters, employment, intellectual property, tax and data protection. Other projects run by LawWorks include (i) LawWorks Individuals, which offers legal advice clinics and self-help resources and (ii) LawWorks Mediation, which is the only pro bono civil and commercial mediation provider in England and Wales.

Bar Pro Bono Unit

The Bar Pro Bono Unit (the “**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. There are over 3,600 barristers who offer pro bono services through the PBU²⁶, encompassing virtually every area of the law. Besides advising on the law, the PBU provides representation in any court or tribunal in England and Wales and assists with mediation. All cases are referred to the PBU by advice agencies (such as Citizens Advice Bureaus, law centres, local MPs and legal advice clinics) or by solicitors. In determining which cases to accept, the 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.²⁷

Barristers wishing to volunteer for the PBU must be willing to assist with cases for a minimum of three days per year, including preparation time for hearings. The PBU provides assistance on a step-by-step basis, however, and may help with several pieces of work within a case that together add up to more than the three-day total. Additionally, the 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.²⁸ The 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 PBU’s panel. Due to the nature of the cases taken on by PBU, however, solicitors are rarely called upon. The PBU is funded solely by donations.²⁹

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 management role, rather than providing legal advice per se.

University Legal Clinics and Law 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 while being supervised by qualified solicitors and/or barristers. For example, BPP Law School has set up

²⁵ LAWWORKS SOLICITORS PRO BONO GROUP, LawWorks for Community Groups, available at <http://lawworks.org.uk/community-groups> (last visited on September 4, 2015).

²⁶ See <http://www.barprobono.org.uk/overview.html> (last visited on September 4, 2015).

²⁷ See BAR PRO BONO UNIT, Do you need help?:available at <http://www.barprobono.org.uk/do-you-need-help.html> (last visited on September 4, 2015).

²⁸ See PRO BONO UNIT at: http://www.barprobono.org.uk/pro_bono_protocol.html (last visited on September 4, 2015).

²⁹ See PRO BONO UNIT, How to Help available at <http://www.barprobono.org.uk/donations.html> (last visited on September 4, 2015).



three centers within England and Wales providing legal information, advice and assistance to members of the public.³⁰

LawWorks' student initiative provides information for students on pro bono opportunities and seeks to encourage involvement by offering guidance on pro bono projects.³¹ Several English law firms assist in managing this initiative. Other organizations, such as FRU, also provide students with pro bono opportunities.

Advice Agencies

There is a national network of advice agencies staffed primarily by volunteers within England and Wales. The two most prominent advice agencies are Citizens Advice (previously the Citizens Advice Bureau, "CA") and the Law Centres Federation. CA is a charity that provides free advice to the public on topics that include legal matters. CA offices are located throughout England and Wales. Advisers, which include over 2,000 volunteers, help clients fill out forms, write letters, negotiate with creditors and connect clients with local lawyers who can represent them in courts or tribunals. CA is funded mainly by government and local authority grants, with contributions from lottery funds, corporations and charitable trusts.

The Law Centres Federation operates under the business name Law Centres. The Law Centres Federation is a registered charity whose mission is to champion free legal advice and representation and to seek justice for the poorest and most disadvantaged in society through the development of a national network of Law Centres.³² There are 44 Law Centres in England, Wales and Northern Ireland which provide free legal advice to needy individuals within Law Centre's coverage area. Law Centres provide legal advice through lawyers, apprentices and trainees, on multiple subjects, provide education and information on the law and individual rights, and lobby for improvements to existing laws. Law Centres are funded through a number of different sources including charitable foundations, law firms, lottery funding and donations by individuals.³³

Historic Development and Current State of Pro Bono

Although the amount of pro bono undertaken by solicitors has increased over the years, practical barriers remain for solicitors engaging in pro bono work. These barriers include a lack of time while also trying to balance fee-paying client work and the pressure to meet the hourly billing targets of their law firm. Some law firms however, include pro bono hours of work within these billing targets, thus encouraging their lawyers to participate. One example of this is the collaborative plan for pro bono in the UK, an initiative pursuant to which participating firms collaborate with each other in order to improve access to justice through pro bono in the UK, including through incorporating an aspirational target of 25 pro bono hours on average per fee-earner in the UK each year.³⁴

Another issue encountered by solicitors who volunteer to carry out pro bono work is that the cases referred to them may not be in their area of experience. For example, corporate law firms (who house a great many of the profession's solicitors) may not necessarily have lawyers experienced in dealing with individuals as clients or in the types of matters that affect individuals, including employment and housing/tenancy issues.

³⁰ Further information is available at <http://www.bpp.com/bpp-university/pro-bono/advice> (last visited on September 4, 2015).

³¹ Further information is available at <http://www.lawworks.org.uk/students> (last visited on September 4, 2015).

³² The Law Centres Federation Annual Report 2007 – 2008.

³³ See <http://www.lawcentres.org.uk/our-work/our-funders> (last visited on September 4, 2015).

³⁴ See <http://news.trust.org/spotlight/Collaborative-Plan-for-Pro-Bono-uk/?tab=introduction> (last visited on February 15, 2016).



Laws and Regulations Impacting Pro Bono

“Loser Pays” Principle

The rules relating to costs in England and Wales are governed by the Civil Procedure Rules 1998 and the general principle behind them is that the loser pays the costs of the claim. This general rule remains in place in multi track cases where damages in excess of £25,000 are claimed. In lower value claims there are fixed costs regimes and qualified one way costs shifting, meaning that a losing claimant may not have to pay the defendant's costs. Essentially, if a claimant recovers damages from a defendant for, say, £30,000 then he or she will be awarded costs, on the standard basis, to be paid by the defendant. If the claimant loses their claim then they would be ordered to pay the defendant's costs of defending the claim successfully.

Rules Directly Governing Pro Bono Practice and Regulations Imposing Practice Limitations on In-House Counsel

Lawyers practicing in-house are able to participate in pro bono work. As an in-house lawyer, however, there are also other factors to be considered, including the fact that in-house lawyers are barred from acting for clients other than their employer. There is an exception in the rules for pro bono work, provided that the work is covered by indemnity insurance and that fees are not charged.³⁵

The Legal Services Act 2007 also applies to in-house pro bono practice, restricting the practice of certain reserved activities, including advocacy, conducting litigation, conveyancing, probate activities, notary activities and the administration of oaths. There are some exemptions to these restrictions but advice relating to these would be best sought from the SRA. LawWorks is lobbying to try to amend section 15 of the Legal Services Act 2007 so as to alleviate the restrictions it imposes on in-house solicitors engaging in pro bono work.

In-house legal teams may opt to join LawWorks, as LawWorks will provide professional indemnity insurance coverage, enabling in-house lawyers to work on LawWorks programs. Companies may also set up internal pro bono programs. In such cases, however, it is important to consider issues such as regulatory and compliance requirements and costs agreements (strictly controlled for pro bono under section 194 Legal Services Act 2007) to ensure that correspondence with clients is tailored correctly and with appropriate letterhead and compliance with the SRA accounting rules, which must be observed when dealing with client money.

Practice Restrictions on Foreign-Qualified Lawyers

As mentioned above, unless regulated by the SRA as a solicitor, or permitted to practice at the Bar as a barrister, foreign lawyers are prohibited from providing advice as to the laws of England and Wales, and must inform potential recipients of legal advice where they are qualified to practice law.

Concerns About Pro Bono Eroding Public Legal Aid Funding

While pro bono services are increasing in England and Wales, there continues to be a less robust pro bono system than in other countries due to the availability of a system of legal aid that uses public funds to pay for legal services for those in need. Concerns have been voiced that increasing pro bono activities could result in reductions in the availability and provision of legal aid.

Availability of Professional Indemnity Legal Insurance Covering Pro Bono Activities by Attorneys

Pro bono work undertaken by lawyers at law firms is generally covered under the Professional Indemnity Insurance (“PII”) of that law firm. For in-house solicitors or barristers, however, it is not possible for them to conduct work on a pro bono basis in the course of their practice for a client other than where their employer provides PII.³⁶ Such insurance can, however, be expensive for an employer. Possible solutions include an in-house legal team joining a project of a law firm and obtaining coverage via that firm's insurance policy, or joining LawWorks, which provides professional

³⁵ See Rule 4.10 of the SRA Practice Framework Rules 2011, available at <http://www.sra.org.uk/solicitors/handbook/practising/part2/rule4/content.page> (last visited on September 4, 2015).

³⁶ See <http://www.lawsociety.org.uk/support-services/advice/articles/when-do-in-house-lawyers-need-pii/> (last visited on September 4, 2015).



indemnity insurance coverage to in-house legal teams for pro bono activities undertaken via the LawWorks programs.³⁷ The Association of British Insurers provides a useful guide on this topic, which can be found at <https://www.abi.org.uk/Insurance-and-savings/Products/Business-insurance/Liability-insurance/Professional-indemnity-insurance/Solicitors-professional-indemnity-insurance>.

Pro Bono Resources

- Citizens Advice: <https://www.citizensadvice.org.uk/> (last visited on September 4, 2015).
- The Law Centres Federation: <http://www.lawcentres.org.uk/> (last visited on September 4, 2015).
- Bar Pro Bono Unit: www.barprobono.org.uk (last visited on September 4, 2015)
- Free Representation Unit: <http://www.thefru.org.uk/> (last visited on September 4, 2015)
- Business in the Community: www.bitc.org.uk (last visited on September 4, 2015)
- National Council for Civil Liberties: <https://www.liberty-human-rights.org.uk/> (last visited on September 4, 2015).

CONCLUSION

The changes to the provision of legal aid in England and Wales brought about by LAPSO have been met with strong criticism, both in the media and the legal profession. Developments should continue to be monitored, especially in relation to any potential change in Government, which may amend LAPSO, and improvement to the public finances which may increase the money available for legal aid. The next UK general elections are not however scheduled to take place until May 2020.

Pro bono legal work, however, continues to gain importance in England and Wales. 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 looks like it will continue to grow in the future.

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Pro Bono Practices and Opportunities in England and Wales

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³⁷ See www.lawworks.org.uk (last visited on September 4, 2015).