

An explosion of legal philanthropy? The transformation of pro bono legal services in England and Wales

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I. Introduction

A tradition of *pro bono publico* legal work (hereafter ‘pro bono’) existed in England and Wales for centuries and was adopted, along with many other traditions, in the legal systems of British colonies. The questions we address here are how pro bono legal services in the jurisdiction have changed and why. In considering these questions we are concerned with the infrastructure of provision (the architecture of pro bono), the volumes and nature of work performed (the typology of pro bono) and the causative factors underlying current patterns (the genealogy of pro bono). The answers to our research questions are relevant to understanding the significance of pro bono services. This will assist with practical issues such as the reliability of pro bono provision in supporting access to justice and theoretical issues such as the significance of pro bono to legal professionalism.

A theoretical framework for considering the motivations underpinning pro bono legal services is provided by a substantial literature on legal professions. The perspective in such work has shifted over time. The early literature on the professions assumed that they were characterised by high ethical standards and by the way they conducted work in a spirit of public service.¹ Consistent with these public interest theories is the assumption that pro bono is motivated by a desire to provide access to justice, and hence support for the rule of law. On this view pro bono is part of the ethical commitment of lawyers to fulfil the needs of clients.²

A competing theory of motive sees professionalism simply as a form of market control.³ From this perspective pro bono services are potentially part of an elaborate ideological

smokescreen⁴ or a bargaining chip in an ongoing ‘negotiation’ between legal professions and the state over the recognition of monopolies or other privileges.⁵ Within this framework, pro bono is more likely to be seen as part of a *noblesse oblige* tradition⁶ in which lawyers voluntarily correct distortions in access to justice in return for a monopoly of litigation and advocacy. Their underlying motive is likely to be seen as manipulative, for example, to forestall state regulation of legal services or to improve their public image.⁷

The groundwork for our analysis was work we did in the late 1990s.⁸ Fortuitously, this period was a watershed moment in the development of pro bono in the jurisdiction. In updating that work we now draw on data published by professional bodies and others and previously unpublished quantitative and qualitative material of our own, including interviews with leading figures in the pro bono movement. We begin with a brief introduction to the jurisdiction focusing on the two most significant legal professions in England and Wales, the barristers and the solicitors and their professional bodies.⁹ We then identify key institutional actors (government, professions, organisations), the types and volume of pro bono work and the causative factors shaping current manifestations of pro bono culture. We also consider the implications of recent quantitative data.

II. The provision of ‘free’ legal services

A. Public philanthropy for the good of the state

Legal historians suggest that lawyers’ charitable responsibility for the poor and the dispossessed were established in the medieval period. The right to sue *in forma pauperis*,¹⁰ was linked to the right of the court to assign lawyers to act for litigants without a fee.¹¹ *Ad hoc* legal aid was sometimes available for special types of case¹² and free representation was

not limited to the poor. The provision of free services continued to be characterised by exceptionalism. For example, by the 1700s, it was conventional for those appearing on treason charges to be represented pro bono.¹³ Since pro bono obligations typically attached to courtroom representation and barristers had a monopoly of advocacy, such obligations probably applied only to them. The narrowness of the obligation suggests that the primary motivation was to assist the judge in managing cases, although concern for the rights of litigants may have been a factor.

B. Legal welfarism

The character of pro bono probably changed at the end of the nineteenth century with establishment of a Poor Man's Lawyers movement by charities based at Mansfield House and Toynbee Hall in East London.¹⁴ These drew on the expertise of solicitors and barristers providing pro bono advice but stopped short of representation in court. The provision of broad based advice and representation occurred when Poor Persons Committees were established.¹⁵ This followed outbreak of the First World War, which resulted in a substantial increase in poor persons petitioning for divorce.¹⁶ Taxing masters adopted the practice of allowing the payment of solicitors' out of pocket expenses in these cases (including clerk's time and office overheads).¹⁷

The voluntary nature of the divorce scheme and the difficulties encountered by people in meeting even limited costs was problematic. A Committee of Inquiry, chaired by Mr Justice Lawrence, was appointed to enquire into the administration of the Poor Persons Rules.¹⁸ Following the Committee's report in October 1919 new rules were introduced which confined recoverable costs to actual out of pocket expenses only.¹⁹ The legal services provided reflected the distinct monopolies and symbiotic relationship of the professions at this time.

Solicitors, although they could appear in minor courts, tended to prepare litigation and brief barristers to conduct advocacy.

The Poor Man's Law Movement was assisted by many philanthropically minded lawyers, but there are also suggestions that it was sometimes abused by lawyers or unqualified parties touting for work.²⁰ There were apparently differences in the attitudes of barristers and solicitors to the work produced by the Poor Persons Committees. Many barristers were happy with the pro bono arrangement because, for them, an appearance in court was free advertising. Solicitors, particularly in some regions, resented the volume of free work and advocated the introduction of state assistance for divorce clients.²¹

When the legal aid scheme was introduced in 1949, following World War II (WWII), it responded to demand for 'private plight' work, such as divorce. Legal aid rates were set at slightly below standard legal charges, but provided a solid and regular income to smaller, local solicitors' firms and to barristers specialising in these areas. The wide availability of legal aid encouraged the development of social welfare as a distinct field of law. It may also have contributed to the inculcation of a 'social service' ethos for the large sectors of the barristers' and solicitors' professions engaged in legal aid work.²²

The advent of legal aid coincided with a significant growth of citizens' advice services during the 1950s. Funded by local authorities and charities they provided common sense advice to ordinary people. During the 1960s and 1970s, their services became more specifically legal, sometimes supported by local lawyers giving free 'legal advice sessions'.²³ This was perhaps the clearest example of solicitors working pro bono at that time.²⁴ The motives of different lawyers offering these free sessions were probably mixed. For lawyers building practices they provided opportunities to identify strong cases eligible for legal aid.²⁵ From the 1970s some

local authorities funded local Law Centres staffed with lawyers, offering free legal services, including, in some cases, court and tribunal advocacy.

The attitude of the legal professional bodies to pro bono during the second half of the 20th century was cautious if not a little hostile. Neither the Bar Council, nor the solicitors' professional body, the Law Society, provided any infrastructure or support for pro bono. Indeed, the Law Society treated voluntary sessions at advice agencies as unfair attraction of business until 1977²⁶ when waivers from practice rules began to be granted. The Law Society's reluctance was largely because the solicitors' profession had grown considerably as a result of legal aid funding. The profession was very aware of a real risk that advice agencies could be a long term competitor to this sector of private practice.

An area in which the pro bono participation of lawyers was encouraged was in handling appeals against the imposition of the death penalty from former British colonies in the Caribbean. Many of the countries retained appeals to the Judicial Committee of the Privy Council on independence.²⁷ In the case of death penalty appeals, English solicitors were needed to prepare the paperwork and barristers were needed to argue the cases before the Judicial Committee. The tradition was that this rather exotic area of work was performed pro bono. London firms that were willing to do it joined a panel and were allocated cases in turn.

When a breakthrough in providing infrastructural support for pro bono came in 1972, it was the initiative of a group of bar students attending the Inns of Court School of Law in Gray's Inn, London.²⁸ Dissatisfied with what was a sterile substantive vocational course they formed 'Bar Students for Legal Advice' operating out of a pub in central London. The students provided legal representation in those tribunals which had been created after WWII to deal with social security, welfare benefits and employment cases. These had been designed to discourage lawyer involvement and legal costs were not recoverable. This had the result that

employers, local authorities and government agencies often appeared using in-house lawyers, while applicants were unrepresented. The bar students levelled the playing field.

In the 1980s the provision of free legal services became a little more ambitious, certainly in and around London and some other centres. Bar Students for Legal Advice had been renamed the Free Representation Unit (FRU) and operated out of an office in the Temple, one of the Inns of Court, opposite the Royal Courts of Justice.²⁹ Solicitors working in law centres, or pro bono in Citizens' Advice Bureaux (CABx), provided initial contact and advice and referred suitable cases to organisations such as FRU to allocate advocates to cases. South Bank University ran two advice sessions at CABx, at Streatham and North Lambeth, staffed by practitioner academics and students and there was also a student law clinic operated by Warwick University Law School.³⁰ The rationale of these sessions was, however, the educational experience of the student more than the provision of free services.³¹

The political environment in which the legal professions operated began to change in the 1980s. The Conservative Party under Margaret Thatcher adopted a neo-liberal political perspective which involved rolling back the boundaries of the welfare state. In the 1990s various measures were introduced to curb expenditure. Administration of legal aid was taken away from the Law Society and given to the Legal Aid Board, a state agency.³² Ending case by case remuneration and pegging eligibility rates worked temporarily. The next step was to end individual applications and to impose fixed budgets on those solicitors' practices and advice agencies selected to offer legally aided services.

The bureaucratic and auditing requirements of the franchising and contracting regimes caused many solicitors firms to stop legal aid work. At the same time as restricting legal aid, successive governments sought to increase competition in consumer-based markets for legal services, reducing market control by the legal professions.³³ By the 1990s the demand for

legal assistance caused legal aid budgets to spiral out of control. In 1994 a newly invigorated Labour Party under Tony Blair was gearing up for its first period of government since 1979. Blair had confronted the hard left of the Party and adopted a neo-liberal world view. This included dealing with rising levels of legal aid expenditure and falling levels of legal aid eligibility.

In May 1994 the Law Society published a report by a Working Party established to consider the issue of solicitors' pro bono work.³⁴ At a Law Society conference in October 1995, Tony Blair praised CABx and called for law firms to do more pro bono work.³⁵ Paul Boateng, the shadow Justice Secretary continued this campaign, arguing that small firm solicitors should provide advice and large firms to provide money to support access to justice.³⁶ When it was elected in May 1997, Labour's determination to control public spending confronted a problem that Blair had undoubtedly anticipated; a significant problem of declining access to justice.

The Labour Party's solution to public spending constraints was to seek a 'third way' in collaboration with social democrats in the US and the EU. Echoing American Presidential campaigns, Blair called for civil society and 'volunteering' to play key roles in an era of productive cooperation.³⁷ In April 1999 a round table discussion took place in Washington with US president Bill Clinton (New Democrats), Tony Blair, the German chancellor, Gerhard Schröder; the Dutch prime minister, Wim Kok; and Italian prime minister, Massimo D'Alema (as Europe's social democrats), included among the discussants.³⁸ The following June Blair and Schröder launched a joint document, Third Way—Die Neue Mitte. With a republican, George W. Bush entering the Whitehouse and Mr Schröder turning towards a more left-wing stance³⁹ the Third Way became a historical footnote.⁴⁰

The Law Society Working Party report had reflected antagonism between government and sections of the legal profession, particularly on the issue of legal aid. The report argued that providing access to legal services was a government responsibility and lawyers did their share by accepting the ten per cent discount intrinsic in legal aid rates. Further, it suggested that the efforts of successive governments to promote competition in the market for legal services weakened any obligation lawyers had. This no doubt explained the generally negative attitude to the idea of a pro bono tradition. Indeed, the report suggested re-naming pro bono ‘voluntary legal services’, which it argued solicitors already did plenty of. It offered the example of solicitors unpaid by recalcitrant clients, a contribution that stretched the meaning of ‘voluntary’.⁴¹

None of the six recommendations made by the Law Society’s Pro Bono Working Party report were ever implemented,⁴² but developments at the Bar in the same period were more propitious. The Bar had a close relationship with FRU, which received contributions from the Bar Council and Inns of Court to support its operating costs, and a number of other pro bono schemes.⁴³ The Bar Council’s chairman-elect, Peter Goldsmith QC had attended the Law Society conference at which Tony Blair spoke in 1995. He had immediately pledged to form a Bar pro bono unit and to personally contribute three days a year.⁴⁴ In 1996 Goldsmith began his year in office by founding the Bar Pro bono Unit (BPBU), an independent charity supported by Bar funding, which referred pro bono applicants to volunteer barristers.⁴⁵ The Law Society proposed to establish a Solicitor Representation Unit, on similar lines to FRU,⁴⁶ but nothing came of the idea.

C. Corporate Social Responsibility

In October 1996, shortly after the report of the Law Society's Pro Bono Working Party was published, a solicitor and founder of a leading charities firm and a moving force behind the Law Society Working Party, Andrew Phillips, called a public meeting to discuss solicitor pro bono.⁴⁷ Held at the Law Society the fact that the meeting was opened by its Deputy Vice President, Michael Matthews, suggested that the Working Party report had split opinion at the professional body. Another potentially significant fact was that a large part of the audience represented large City of London law firms.⁴⁸ As corporate/ commercial firms they had never been involved in legal aid, or even in work for private clients. They had, however, become notably successful and immensely wealthy. It would be pure speculation to suggest that, in the *noblesse oblige* tradition, this increased a sense of obligation to pro bono.

The large firms had grown exponentially since the lifting of a cap on the numbers of partners in the 1960s.⁴⁹ Many had benefitted from doing legal work for the privatisation of state assets by Conservative governments. By the 1990s the top ten large firms by gross income were competing with the US behemoths in international legal services markets. After a morning lamenting the failure of the report to offer a firmer lead, it was decided to elicit interest at a further meeting at the offices of one of the magic circle firms in the City of London. This meeting led to a commitment of funding from a number of large firms to support the formation of the Solicitors' *Pro bono* Group (SPBG) with a full-time co-ordinator.⁵⁰

It is arguable that one of the biggest influences on the development of solicitor pro bono was the concept of Corporate Social Responsibility (CSR), which emerged in the 1960s as a more or less distinctive model of corporate self-regulation.⁵¹ While the meaning, scope and significance of CSR had always been contested⁵² it was promoted as a more effective means of controlling corporations and promoting the public good than state law.⁵³ CSR was

introduced to the UK following a meeting of leaders of large Anglo-American corporations in 1980. The meeting, jointly hosted by the British Minister for Local Government and the US Ambassador,⁵⁴ was attended by the senior executives of major firms in the United States and the UK, together with those from the US with direct experience at the most senior level of private sector initiatives within the community. The aim was:

‘to explore the concept of corporate social responsibility and to provide the opportunity for an exchange of experience between the two countries, particularly for individuals working outside Government with an interest in greater community involvement by large firms.’⁵⁵

The conference concluded that interventions needed to be more active and that there was a need for ‘discussion and action to achieve a more innovative approach for business in contributing resources to urban renewal’.⁵⁶

The Anglo-American conference led to formation of a charitable NGO, Business in the Community (BITC), in 1982. Some notion of the importance attached to BITC is evident from the appointment of the Prince of Wales as president from 1985. As described by Professor David Grayson, former joint managing-director of BITC, it had three phases of development: in the 1980s corporate community involvement, in the 1990s corporate community investment and, from 2000, corporate responsibility. The first phase aimed to help business regenerate local economies depressed by corporate closures, the second encouraged business to organise its involvement and the third phase focused on responsible business practices and sustainability.⁵⁷

In the 1990s, in the second phase of development, its initial concerns, the economic and ethical dimensions of corporate governance, expanded to embrace a corporate philanthropic dimension.⁵⁸ During that period large corporations in the UK were under political pressure to

adopt a CSR agenda.⁵⁹ In the course of our earlier research we were told that BITC's strategy at that time was to approach directly the head of any organisation it sought to recruit. Their pitch was to emphasise the business advantages to businesses participating in community programmes as much as a reaction to the preceding 'decade of greed'.⁶⁰ It was in the second development phase that BITC formed a Professional Firms Group (PFG) specifically to outline the 'business case' for 'corporate action' in professional firms and to target employee volunteering. Of the 200 members of the PFG at that time, 40 were law firms.⁶¹

It seems likely that the work the PFG had done with large law firms led to formation of the SPBG. Caroline Knighton, the Director of Business of the PFG, was the contact point given in the press release announcing the Law Society event,⁶² she accompanied Andrew Phillips and spoke at the meeting.⁶³ The positive response of large firms to the initiative may also have reflected a number of other factors. These included a huge increase in trainee solicitor numbers which had accompanied the expansion of corporate firm personnel and the appointment of in-house training co-ordinators. The sessions at local advice service offices provided neophyte lawyers with client interaction, an opportunity to develop legal skills and a much needed sense of purpose. Therefore, pro bono fitted into a suite of training opportunities for trainees which the large firms had geared up to provide.

Large firms adapted conceptions of pro bono to their cultures. It became more common for senior lawyers to do free work for charitable organisations. This might have been conveyancing of property or other assistance with the commercial dimensions of charitable work. There were also attempts by some firms to wrap up pro bono in a philanthropic package, whereby legal work was lumped with non-legal charitable work or financial donations. This had several advantages. It allowed the firms to make non-specific claims of philanthropic activity without losing the billable hours of laws and it allowed non-legal staff, which were employed in increasing numbers by large firms, to participate. There is no doubt

that many firms took CSR very seriously, to the extent that they gave senior partners overall responsibility for it and allowed pro bono contributions to count as billable hours. Many also appointed lawyers as pro bono co-ordinators to manage the pro bono workload and ensure that it was done properly.

D. An assessment of pro bono work by 2000

In this section we base a number of conclusions regarding infrastructure, volumes, culture and motivation, on our work on pro bono set out in the introduction. This work provided the baseline data considered in the rest of this section.

i. Infrastructure

The BPBU immediately attracted volunteer panel members, including the leading practitioners, Queen's Counsel.⁶⁴ In its first year it had 350 volunteer barristers on its panel, 1 part time member of staff and matched 110 cases.⁶⁵ By the end of that year it had 720 barristers, including 120 QCs. These numbers crept up gradually in the early days⁶⁶ and by 2000 the BPBU had a thousand barrister volunteers.⁶⁷ It deployed a senior review panel assessing all cases for merit, suitability and financial eligibility. This enabled selection of important cases and, because they invariably involved advocacy, ensured that preparation time could be invested in them.⁶⁸ The BPBU then referred to a suitable barrister but played no further role in the matter; any subsequent relationship was directly between counsel and the client.⁶⁹

After its creation in 1996 the SPBG established itself in a campaigning role, attracting new members and helping to raise the profile of pro bono. Most importantly, it managed to enlist large firms beyond the original corpus of enthusiasts. By 2000 over 40 per cent of the top fifty law firms were members and many claimed to be performing thousands of hours of free

work.⁷⁰ Perhaps more significantly, by 2001, 13 of the top 20 firms had appointed full-time *pro bono* co-ordinators, claims about *pro bono* work began to appear in client brochures and the promise of opportunities to conduct it in trainee recruitment literature. Because of its non-involvement in service delivery, SPBG failed to demonstrate a clear impact on the delivery of *pro bono* legal services.

ii. Volumes

In 1996 the BPBU had 250 requests for help per year. When a barrister was assigned to a case the expectation generally was that it would involve a court appearance. It is arguable therefore that the BPBU was more concerned about the quality than volume of interventions.

In contrast, the claims made for solicitor *pro bono* were always about quantity. In this regard, it appeared that the claims of the Pro Bono Working Party for the high volume of solicitor *pro bono* work were not well evidenced. A survey of 123 local Law Societies that the working party conducted in November 1993 produced only 32 responses. These apparently referred to the 'many' practitioners on CABx rotas, but confirmed that there were no formal records.⁷¹ Nor did the Working Party's claim chime with other existing data. A Law Society survey of 978 private practitioners conducted in 1989 had found 41 per cent claiming to carry out 'public service work for which [they did] not charge fees' but only 3 per cent doing more than 5 hours a week.

One concrete source of information on the volumes of activity was *pro bono* work done by lawyers in advice agencies. Only four years before the Working Party Report a survey of all 559 members of the Law Centres Federation had found 369 wholly or partly qualified lawyer volunteers, far fewer than one per cent of the solicitors then holding practising certificates.⁷² In 1997 the Law Society included questions on *pro bono* in its Annual Survey of solicitors. This found that solicitors performed 37 hours of free or substantially undercharged work a year.

Based on this rather dubious definition the Law Society claimed that solicitors performed £124 million worth of pro bono per annum.⁷³

Our survey of the hundred largest firms⁷⁴ had few swift and positive responses. After two waves of follow up calls we had 61 responses and found 53 firms performing pro bono work. Less than 50 per cent of these (n.20) kept any records of it. Of these, nine claimed to have done work worth more than £100,000 in the previous year. Only six published a pro bono policy. This apparent indifference to pro bono in large London firms was also found by Galanter and Palay, who conducted qualitative interviews in City firms between 1990 and 1994.⁷⁵

iii. Culture

Our assessment of the types of pro bono performed in the period approaching the millennium was that it consisted of four strands. First, there was strong evidence of a relationship between advice agencies and law centres and local solicitors or barristers providing in-house advice sessions, and perhaps more, on an individual basis. Second, a number of pupil and junior barristers provided advocacy through FRU. Third, a significant number of large firms were beginning pro bono programmes, typically based in local advice agencies. Fourth, the Law Society claimed that many solicitors provided pro bono on an *ad hoc* basis, although their definition led us to doubt the significance of this.

There were tenuous links between these various kinds of pro bono. For example, lawyers attending external advice sessions might well work on cases pro bono from their office.

Second, large firms often followed the student model for sessions at advice centres staffed by teams of qualified and unqualified personnel. Third, lawyers working at advice centres might seek the services of FRU to secure advocates for pro bono clients. Despite these connections the culture of pro bono was fragmentary and unformed. Even the definition of what constituted pro bono was uncertain.

Despite the rather patchy large firm commitment to pro bono we found in 1996 we saw signs of the emergence of a distinctive pro bono culture in a minority of large firms. Under the umbrella of CSR, large law firm pro bono changed character. It was no longer a manifestation of an individual commitment to access to justice but a manifestation of a firm's social responsibility and, often, a responsibility to a particular community. This was manifest in the assignment of work to trainees, the presence of large numbers of trainees from single firms in different advice agencies and the organised contribution of partners' legal work, such as conveyancing, to charitable organisations.

In the CSR model which many large firms signed up to, pro bono was only part of the offering. In fact, in the determination to ensure that a philanthropic contribution was mainstream and inclusive, they tended to elide the distinction between legal pro bono and other forms of employee philanthropic contribution, such as working on reading schemes in local schools. One of the recommendations of our Nuffield Report was that this tendency should be resisted. Rather, we argued that the distinctiveness of pro bono should be preserved as a 'way of inculcating an ethos of public service, improving the public image of lawyers and establishing collegial relations between different sections of the profession'.⁷⁶

iv. Motivation

It is clear that, for much of the 1990s, the growing culture of rights and the low political priority afforded legal aid, presented an irresolvable political dilemma to government. For a period, pro bono seemed to be part of a potential solution. The Bar's positive response was a personal initiative of its chairman Peter Goldsmith QC in direct response to a speech by Tony Blair. It may be coincidental Goldsmith became a Labour politician only a little later.⁷⁷ At the time we were told that the Bar had been subject to a Parliamentary campaign of lawyer denigration intended to create an environment receptive to legal services reform.⁷⁸ Andrew

Phillips admitted that part of his motivation for his pro bono initiative was that, as a member of the House of Lords, he was subjected to a 'drip, drip of denigration of lawyers by government spokesmen'.⁷⁹

Large firms may also have responded directly to Labour's campaign. The probability that they were its real target is suggested by the fact that they were threatened, variously, with a levy to support access to justice or some other compulsion.⁸⁰ At the time, we suggested that the phenomenon of large firm pro bono reflected a response to a number of interacting pressures: idealism (of young trainees in particular), professionalism (an obligation for lawyers to respond to legal need) and commercialism (growing pressure from corporate clients). To these we speculatively added the force of globalisation, represented by CSR.

CSR entered the frame at the right time. Although it came about through an interaction with US business leaders and politicians,⁸¹ it was also a very neo-liberal response to a problem created by neo-liberal economics. It emphasised the win-win possibilities of worker involvement in feel good activity for social benefit. Not only would pro bono work polish the firms' public image, it would make employees feel better and help to build more successful organisations. By embracing pro bono, large firms were potentially killing these several birds with a single stone, seizing the initiative and possibly heading off government intervention.

Whatever the pressures on professions and firms, there were no new demands to bridge the widening access gap in the aftermath of Labour's electoral success in 1997. It is not clear whether the formation of the BPBU and the SPBG was deemed a sufficient response.

Officially, Ministers pinned hopes on increasing the efficiency and profile of existing advice services under the umbrella of a new Community Legal Service,⁸² which included bringing together the various advice agencies into a mutually supportive network. If so, the policy shift

may have reflected a decision that access to justice could not depend on lawyers' providing free work.

E. Evolution of the new pro bono culture since 2000

Since 2000 a number of actors have directly or indirectly shaped the provision of free services: government, NGOs, large law firms, academia, legal practitioners and the legal professions. In this section we consider the impact of these various 'players' in the evolution of the new culture of pro bono particularly in terms of the growth of pro bono institutions and infrastructure.

i. Government

After 2000 government continued to reduce the level of legal aid and reliance on legal aid as the principal means of providing access to justice. The plan to provide the Community Legal Service, reducing reliance on private practice lawyers, was largely unsuccessful and was formally abandoned in 2005.⁸³ The Legal Services Act 2007 aimed to create legal services 'supermarkets' using non-legal capital and management. The relative failure of this experiment has led government agencies to advocate encouraging competition from unregulated legal service providers.⁸⁴

More successful efforts to reduce reliance on legal aid were the introduction of alternative ways of funding litigation from the late 1990s, so-called conditional fee agreements, a species of previously forbidden contingency fee agreements for damages claims.⁸⁵ At the same time, court procedures were adjusted to reduce dependence on lawyers; introducing 'litigant friendly' civil procedure rules, increasing judicial control of the process and placing greater emphasis on alternative dispute resolution.⁸⁶ The latest phase of this strategy includes

proposals for online courts which dealing with claims up to £25,000 might exclude lawyers, either formally or through costs mechanisms.⁸⁷

In 2012 the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) at s.44 legalised damages based agreements, essentially a conventional contingency fee arrangement, but removed substantial parts of some areas of law, family, immigration, welfare benefits, employment and clinical negligence, from the scope of legal aid.⁸⁸ In the financial year following LASPO net expenditure on legal aid fell from £1,916.7⁸⁹ million to £1,709.5⁹⁰ million; funded individual acts of assistance dropped from 2.3⁹¹ million to 1.8 million.⁹² Further reductions were expected to significantly reduce legally aided acts of assistance.⁹³ By 2017, the decline of legal aid, and the reduced profitability of conveying real property, meant that many small firms no longer achieved 30 per cent profit, the traditional benchmark for solicitors' practices.⁹⁴

In the period after 2000 government did not ignore the pro bono issue. In fact, it became directly involved. The impetus was provided by Peter Goldsmith QC, founder of the BPBU, who was called into Blair's cabinet as Attorney General in June 2001. In 2002, Goldsmith formed the Attorney General's Pro bono Co-ordinating Committee (A-GPBC)⁹⁵ which adopted the mission of promoting, developing and co-ordinating *pro bono*. Goldsmith appointed a leading solicitor, Michael Napier, 'pro bono envoy'⁹⁶ to carry the message to professions and practitioners.

One of the A-GPBC's first acts was to issue a *pro bono* protocol⁹⁷ (see Appendix) defining pro bono Legal Work as 'legal advice or representation provided by lawyers to individuals and community groups who cannot afford to pay for that advice or representation and where public funding is not available'.⁹⁸ It also legislated to ensure that costs could be recovered when litigants were assisted created *pro bono* costs orders⁹⁹ and created a charitable

foundation to receive costs awarded and fund *pro bono* initiatives.¹⁰⁰ The protocol¹⁰¹ was endorsed by the Law Society, which uses this definition throughout its pro bono manual,¹⁰² the Bar Council and the Chartered Institute of Legal Executives.¹⁰³ Lawyers and firms may voluntarily sign up to the protocol.¹⁰⁴

Another initiative brokered by the A-GPBC had an enduring impact: National Pro Bono Week (NPBW).¹⁰⁵ Held since 2002, the week comprises a series of events celebrating the legal professions' efforts and awarding prizes for outstanding individual performances. When Goldsmith left government office¹⁰⁶ the A-GPBC continued under successive office holders. The climax event of NPBW is generally attended by one or more of the government law officers. This gives pro bono the stamp of political approval now bestowed rarely on the legal professions.

ii. The pro bono organisations

After 2000 the BPBU continued in much the same way it had since establishment. Its panel of barristers grew incrementally a little each year, as did the number of cases it handled. In 2002 it was reported that the BPBU had set up a solicitors' panel of 11 firms, including most of the 'magic circle' firms, for cases that needed the support of solicitors for case preparation.¹⁰⁷ In 2000 it established Bar in the Community (BIC) to provide barrister trustees to voluntary organisations.¹⁰⁸

After 2000, the SPBG tried to present itself as the face of solicitor pro bono across the board and made a strategic change of direction. It adopted the title LawWorks in 2006 and with this change of operating title it adopted a more proactive role in service delivery. This was achieved by establishing a referral system to match lawyers with advice centres in the Law Centres Federation.¹⁰⁹ By 2006, 55 of these free clinics had been established for work not

supported by legal aid.¹¹⁰ By 2013 it also had a number of delivery modes, offering case brokerage and email advice.

In 2010 a National Pro bono Centre was established.¹¹¹ The centre brought together the charities dedicated to the provision of pro bono legal services and access to justice in a building in Chancery Lane, the London avenue that links the Law Society and the Inns of Court.¹¹² At various times it has housed organisations including the BPBU, LawWorks, CILEx Pro bono Trust (established for legal executives), the Access to Justice Foundation, the London Legal Support Trust, the Environmental Law Foundation and i-ProBono.¹¹³

Following the evisceration of legal aid provision by the LASPO Act 2012, in 2013 LawWorks received 2,883 enquiries, an increase of 56 per cent on the previous year.¹¹⁴ It quickly became apparent that drastic action was required to preserve the expertise of legal aid practitioners in many areas of law. In response, LawWorks launched Secondary Specialisation, a programme employing specialists in a range of social welfare law disciplines. The aim was to train and supervise lawyers from member organisations to advise and represent vulnerable clients in cases concerning welfare benefits, housing, community care and family cases (including domestic violence).¹¹⁵ The firms with resources to commit to developing secondary specialisation were, typically, top 100 firms.¹¹⁶

iii. Large Law firms

Published data rarely distinguishes contributions by size or type of private practice firm. It is therefore difficult to assess how widespread contributions are. It seems likely that large law firms make a very significant contribution to the total of solicitor pro bono hours. Many claim to provide thousands of hours each year and many of the top fifty aspire to contribute at least 25 hours per fee earner.¹¹⁷ After 2000, considerable effort was invested in trying to ensure that pro bono was seen as an initiative of the whole profession. In the LawWorks pro

bono awards there are distinctions made in the categories covering, for example, size of firm, status of individual practitioners and size of team.¹¹⁸

Large firms continue to be influenced, directly or indirectly, by CSR. This is generally confirmed by stories in the trade press about corporate clients calling for their lawyers to demonstrate community commitment or requiring CSR to be addressed in pitches for work.¹¹⁹ Recent analysis of the websites of large law firms in England and Wales by Vaughan *et al* suggests that pro bono continues to sit within a broader CSR framework.¹²⁰ CSR disclosures by the 100 largest law firms found that activity tended to be grouped in three areas: (i) pro bono and community giving; (ii) diversity and inclusion; and (iii) environmental matters.¹²¹ It noted that many of the top 100 firms made no distinction between pro bono and other categories of CSR and that the majority disclosed no data regarding their pro bono work.¹²² Therefore, there was no way of distinguishing legal advice from wider ‘community giving’.

The business rationale for working pro bono persists in large law firms. Tender documents and law firm panel appointment procedures continue to emphasise the role of CSR in attracting employees and increasing work satisfaction¹²³ rather than, for example, the professional obligation of lawyers to provide free legal services. Vaughan *et al* suggest that firms’ literature addresses both internal and external audiences and that pro bono is a potential source of good news stories. They view ‘the widespread references to awards and external recognition for CSR on many law firm websites’ as ‘part of the ‘media-isation’ of legal practice, and one concrete aspect of the wider pan-promotionalism of contemporary culture’.¹²⁴

iv. The academy

The academy potentially served a role in shaping the character of the new culture of pro bono. It is plausible that our report for the Nuffield Foundation, *Something for Nothing*, had some impact, particularly on the Attorney-General's Pro Bono Committee. The report was actively promoted by Michael Napier in promotional speeches given in his envoy role. He supported our strict definition of pro bono activity and invariably mentioned our conclusion that pro bono might be a mechanism for 'reinvigorating professionalism'. Napier also ensured that copies of *Something for Nothing* were distributed at the committee's first meeting. Although we interviewed Lord Goldsmith and specifically asked whether the report had influenced him on the need for pro bono costs orders and the Access to Justice Foundation, he was unable to recall any impact on his thinking.¹²⁵

The other role of the academy was as a place for student voluntary legal service. As described above, this long pre-dated the designation of such work as 'pro bono'. Nevertheless, the pro bono label may have helped to ensure that the three active law school 'clinics' in England and Wales were joined by more in the succeeding decades. Most of the new clinics followed the Law Centre model, with a clinic located in the law school or in a nearby agency. A notable exception was the Centre for Capital Punishment Studies programme at Westminster University, which sent students and recent graduates to assist with death penalty appeals in the Caribbean and US.¹²⁶

The growth of Law School pro bono clinics was influenced by LawWorks, which launched an initiative to develop pro bono in universities.¹²⁷ By 2014, although the rate of growth was beginning to slow, 70 per cent of all law schools had *pro bono* projects.¹²⁸ Although the main focus of most of these clinics remained student education and training, their re-branding or labelling as pro bono activities had advantages, such as making them eligible for national pro

bono awards.¹²⁹ By 2011 more than 65 per cent of law schools had some such activity, by this time often referred to as *pro bono* clinics.¹³⁰ Many of these clinics are increasingly central to Law Schools' core business. In 2017, for example, Nottingham Law School was granted a license to operate a teaching law clinic as part of an Alternative Business Structure providing initial advice to small businesses. Although any profits would support an existing Law Clinic, it is a legal business rather than *pro bono*.¹³¹ It could be argued, however, that law students will acquire a habit of providing *pro bono* services which might be carried into practice.

v. Legal practitioners

Although all sections of both professions are engaged in *pro bono*, there are reasons why engagement is particularly strong among trainees' at large solicitors' firms and among junior barristers.¹³² Many law graduates might be tempted to join large solicitors' firms because they offer a disproportionate number of training contracts and provide generous financial packages. These firms typically employ their trainees in the routine aspects of corporate or commercial transactions and rarely provide client contact. *Pro bono* provides an opportunity for trainees in large firms to experience, and to gain experience of, 'real' legal work.¹³³ Barristers, on the other hand, are self-employed. At the start of their careers, they rely on the chambers clerk to allocate them work and it may be thin on the ground. *Pro bono* allows them to obtain experience so that they can 'hit the ground running' when the chance arrives. This is not to suggest that many young practitioners are not idealistic in the pursuit of *pro bono*, but their motives may be mixed.

Many practitioners followed existing routes in developing their *pro bono* work, but several examples in the LawWorks national awards demonstrate that *pro bono* is often important in keeping advice services alive during difficult times.¹³⁴ This includes the women-only service

at Toynbee Hall.¹³⁵ The awards also highlighted some who had pursued interesting new avenues, often with a view to assisting pet causes. A notable area of development was in pro bono work overseas. The awards literature highlights examples of such work conducted by teams from particular law firms, but data suggests that international work is a particular area of barrister activity (see next section).

The winner of the Bar Pro Bono Award in 2017 established a programme assisting individuals convicted of capital offences in Uganda.¹³⁶ Initially working through the Centre for Capital Punishment Studies, Tanya Murshed wrote submissions for around 60 individuals facing the death penalty and made applications for resentencing.¹³⁷ Around 243 prisoners were either re-sentenced or released as a result of this work. Many of the pro bono practitioners recognised through awards also set up organisations to continue the work that they had been doing.¹³⁸

vi. Legal professions

The campaign to promote pro bono had an impact on the professions. The General Council of the Bar, the barristers' professional body, had a close hold on pro bono from 1996, no doubt partly because the BPBU was the initiative of its sitting president. From 1999 it received core funding from the Bar Council and the four Inns of Court.¹³⁹ The Bar Council provided 50 per cent of operating costs, around £60,000 in 2012. It was also broadly supported by barristers. From 2013 an Authorisation to Practice Appeal invited them to contribute £30 each to the BPBU while renewing their practising certificates.¹⁴⁰ In 2016, 8,297 barristers, including 85% of QCs, each volunteered to contribute £30 to the BPBU when renewing their practice certificates,¹⁴¹ bringing in a total to the unit of £248,910. This enabled BPBU to support a relatively high level of staffing; 13 in 2016.¹⁴² For financial year 2015- 2016, the Bar Council

and Inns of Court also donated £64,800 and £5,000 respectively to the FRU.¹⁴³ In the period 2015-2016 FRU employed administrators and a solicitor to prepare more complex cases.¹⁴⁴

The Law Society's approach to pro bono reflected ambivalence. This may have been due attitudes partly fostered by the reliance of many small firms on legal aid. Locked in a philosophical battle with successive governments about legal aid, The Law Society, was in defensive mode on pro bono. Although it emphasised its formal support for the principle of *pro bono* and for the SPBG¹⁴⁵ it kept both at some distance. It made various grants to the SPBG over the years, becoming a major funder in 2011. It currently providing around a quarter of LawWorks income¹⁴⁶ (the remainder being provided by charitable trusts and notably, the Big Lottery fund).¹⁴⁷ Perhaps the underlying problem for the Law Society was that pro bono reinforced a schism, latent in the solicitors' profession, between firms representing different interests. Legal aid firms represented something approaching a 'social service' ethic for legal practice¹⁴⁸ whereas corporate/ commercial firms had hitherto focused almost purely on business. By crossing the divide large firms were not only taking small firm's business, they were taking their *raison d'etre*.

In 2017 the Law Society launched a Pro Bono Charter.¹⁴⁹ It included 46 'founding signatories' including many large firm members of SPBG.¹⁵⁰ Given the existence of SPBG, it is unclear what the Law Society hoped to achieve by this initiative. Two possible reasons were that it was not content in its relationship to SPBG or that it wanted a vehicle that emphasised a more overt commitment to pro bono. The package of benefits offered to firms adopting the charter included three month's free membership of SPBG,¹⁵¹ which suggests it was the latter.

A number of factors may have led to the Law Society's change of direction on pro bono. First, the creation of the National Pro Bono Centre in 2010 began a process of developing a

national and integrated pro bono culture, providing an opportunity for the professional body to occupy local space in relation to solicitors. Second, the decades' long battle over legal aid was largely lost; it had never developed electoral traction and, despite the devastation wreaked by LASPO 2012, access to law, unlike access to health or education, was not a feature of any of the parties in the General Election of 2017.

Legal aid was not the only battle with government the Law Society had lost. The third factor probably influencing the Law Society's decision to launch the Pro Bono Charter was that, under the Legal Services Act 2007, it had been stripped of all regulatory power, leaving only 'representative' functions. The professional body was in search of both a role and activity that reflected credit on the organisation; pro bono contributed to both objectives. At its launch the Law Society President, Robert Bourns stated that 'The Pro Bono Charter offers a framework to unite the solicitor profession's pro bono strategies, policies and learning and further enhance the impact of the pro bono work carried out by our members'.¹⁵² This involved subscribing to a the joint pro bono protocol and contributing data, including best practice information, which would help the Law Society demonstrate that its initiative had impact.¹⁵³

The web page setting out details of the Pro Bono Charter includes a familiar disclaimer about pro bono not replacing legal aid, by now incorporating other campaign messages. It read:

Pro bono must never be viewed as a substitute for a properly funded legal aid system but rather should be seen as part of a coordinated strategy promoting access to justice, alongside public legal education and tackling barriers to access such as court fees.¹⁵⁴

This emphasises that the Law Society still, as it always had, saw pro bono as a bargaining chip in an oblique negotiation between professions and government about the terms of access to law.

III. The Growth and Character of Pro Bono Legal Services

In this section we present available data on the delivery of pro bono legal services in England and Wales since our earlier research, first by considering the contribution of solicitors and then that of barristers.

A. Solicitors

i. Demographic

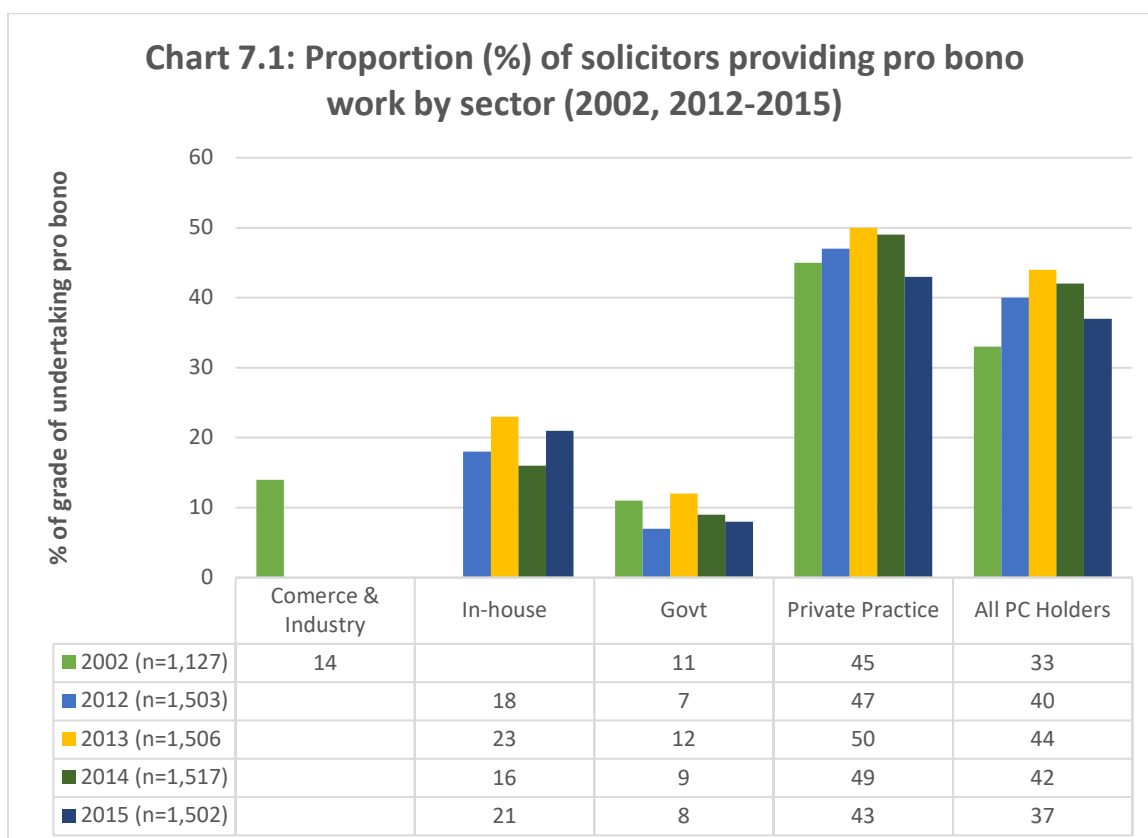
Over the period between 2000 and 2017 the population of practising solicitors rose from nearly 101,000¹⁵⁵ to just under 140,000.¹⁵⁶ Of these around 20 per cent were typically employed in government or industry. In 2015 firms with more than 26 partners offered nearly 50% of all trainee placements.¹⁵⁷ The City of London, where most of the 100 largest firms are located, accounted for one third of all traineeships registered.¹⁵⁸

ii. Data collection

As there is no regulatory requirement to provide pro bono services the Law Society's Annual Statistical Review did not collect relevant information. The Law Society's *Pro Bono Work of Solicitors Annual Omnibus Survey* of individual PC holders was started in the early 1990s. Telephone interviews were conducted with a representative sample of practitioners from private practice, central and local government and other in-house (primarily commerce and industry, but also including, charities, health, educational establishments). Total sample size was not less than 1,200. Since 2012, the *Individuals Omnibus Survey* is referred to as the *Practising Certificate Holder Survey* and the sample has increased to 1,500 individuals. Pro bono data has been collected as part of a wider survey.¹⁵⁹ From 2012 the Law Society adopted the *Pro Bono Protocol* definition of *pro bono*, so the figures prior to that are not directly comparable.

iii. Proportion of different practice types performing pro bono

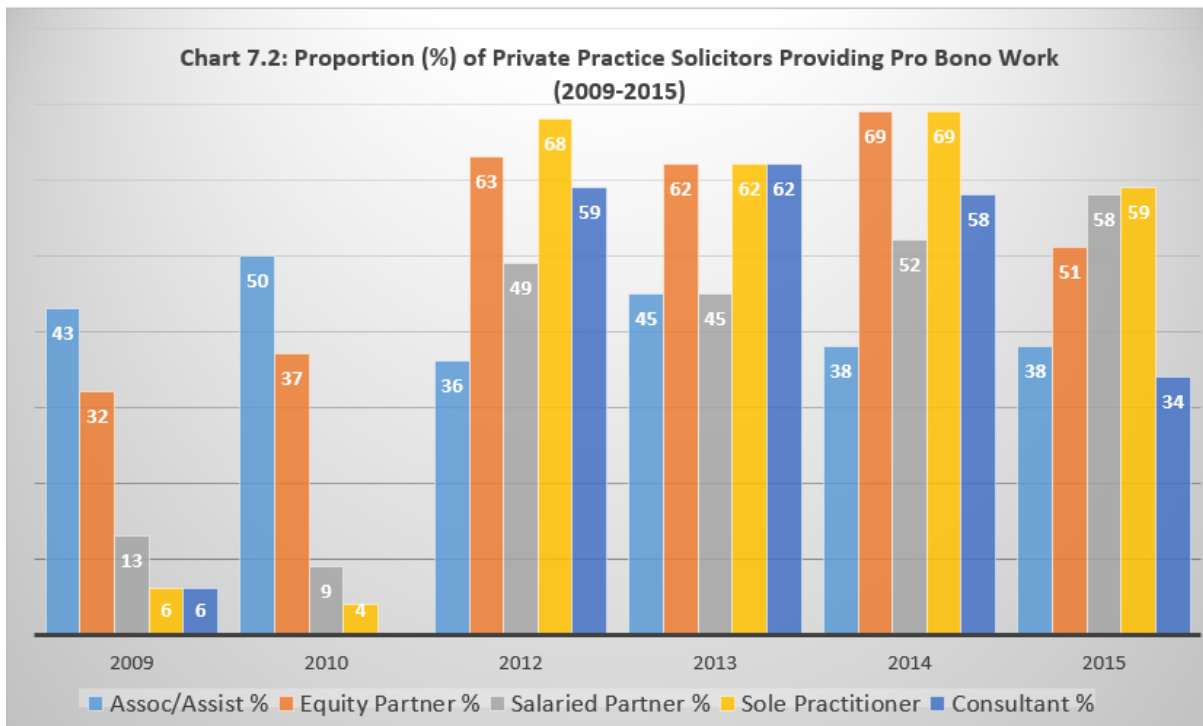
Chart 1 sets out the proportion of practising solicitors providing pro bono work in three sectors: government, commerce and industry and private. The first year in which comparable data was collected was 2002. It showed that the proportion of solicitors in private practice performing pro bono work was over three times that in commerce and industry, the next largest proportion. It also showed an overall pro bono participation rate of around 33 per cent of practitioners. The same kinds of data were not collected again until 2012. At that time levels of engagement had slightly increased for private practitioners and in-house solicitors (the equivalent of commerce and industry), but fallen for those in government positions.¹⁶⁰ Over a four year period since, overall levels of participation hovered around the 40 per cent mark.



Source: The Law Society, *The Pro Bono Work of Solicitors: Findings from Omnibus Survey Nine 2002*, The Strategic Research Unit 2003, at p.2 and The Law Society, *The pro bono work of solicitors PC Holder Survey 2015*, The Law Society at p.4.

iv. Grade of private practice solicitor performing pro bono

Chart 2 shows the proportion of solicitors of different grades performing pro bono work between 2002 and 2015. While the proportion of associate solicitors doing such work remained fairly constant between these two points, the proportion of sole practitioners nearly doubled and the proportion of partners more than doubled. During the period between 2009, the first year the data distinguished between equity and salaried partners, and 2015, the proportion of equity partners participating rose from 32 to 51 per cent while the proportion of salaried partners rose from 13 to 58 per cent. At the beginning of the period (2009) salaried partners and sole practitioners were among those contributing the least as a proportion of practitioners in these grades. By the end of the period (2015) they were contributing the most. This, we hypothesise, might be because pro bono had been defined to include providing free legal work to charities.

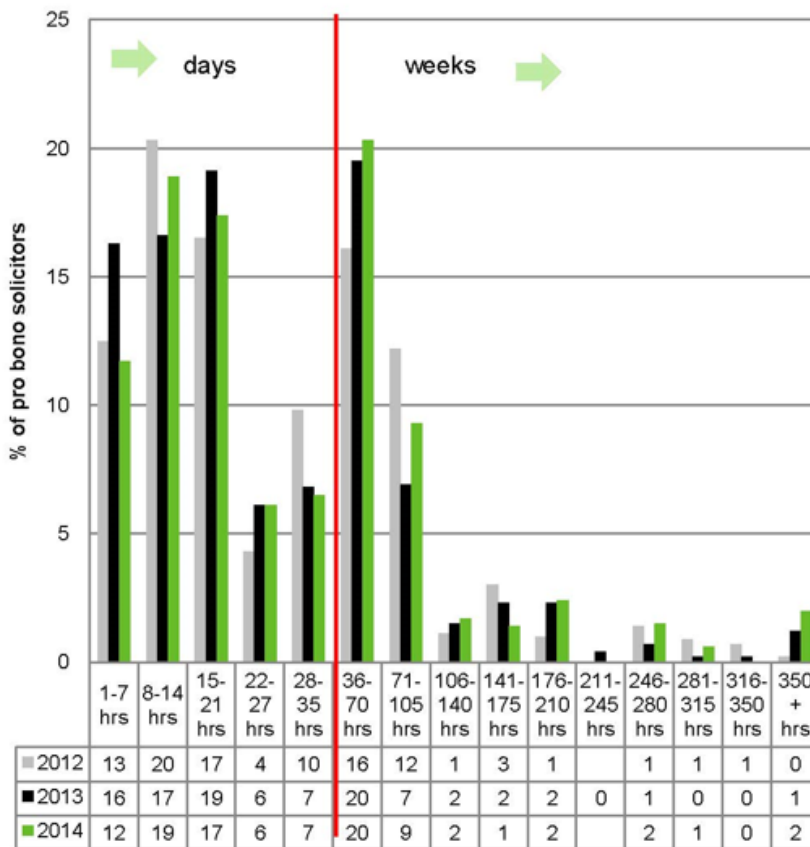


v. The Financial Value of Private Practice Pro bono Work

Based on sample data some solicitors provide up to 600 hours of pro bono work in a year.¹⁶¹

These outliers are not represented in chart 3, which shows that the average number of hours performed by pro bono solicitors between 2012 and 2014 was around 50 hours a year. Across the profession, including solicitors not working pro bono, the average per private practitioner is around 23 hours. Using these data it is possible to estimate the overall value of solicitors pro bono contributions based on the average charge rate for each year between 2011-12 and 2014-15.

Chart 7.3: Pro bono hours worked, by pro bono solicitors in the previous 12 months (2012-2014)



Source: PC Holder Survey 2014, p8

Based on the data in Table 1 the total value of solicitors' pro bono work rose from £513 million to £592 million between the beginning and end of the four year cycle. This represented 2.7 per cent of the total turnover of solicitors' firms at the start of the period and 2.4 per cent at the end. Unfortunately, because of definitional and methodological problems it is not possible to accurately compare this with the value of pro bono work at the beginning of the period under discussion. In our earlier article we referred to a Law Society claim that 'solicitors give at least £124 million of free legal help a year' an average of 37 hours from each private practitioner.¹⁶² Even if this claim was wildly inflated, as seemed probable based on the data we had collected from large firms, the five times increase in the 20 years since is dramatic is not explained by the admittedly large increase in the number of solicitors since 2000 referred to under the heading 'Demographic' at the start of the section. Moreover, following LASPO, it is roughly equivalent to a third of the civil legal aid budget, meaning that the solicitors are now making a significant contribution to legal services.

Table 7.1: The financial value of solicitors' pro bono between 2011/12 and 2014/15.

| Value calculation (Financial figures have been rounded) | 2011-12 (n=308) | 2012-13 (n=345) | 2013-14 (n=312) | 2014-15 (n=268) |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Average charge out rate | £254 (£215 median) | £259 (£220 median) | £256 (£213 median) | £283 (£240 median) |
| Average number of pro bono hours by pro bono solicitors | 49 hours (25 hours median) | 47 hours (20 hours median) | 53 hours (25 hours median) | 53 hours (30 hours median) |
| Average number of hours across all private practitioners | 23 hours | 23 hours | 26 hours | 23 hours |
| Average value of pro bono work (for those providing pro bono services) | £12,446 (£5,375 median) | £12,173 (£4,400 median) | £13,568 (£5,325 median) | £14,999 (£7,200 median) |
| Average value of pro bono work across all private practitioners | £5,850 | £6,087 | £6,648 | £6,509 |
| Total number of solicitors in private practice | 87,768 ¹ | 86,840 ² | 90,306 ³ | 91,029 ⁴ |
| % of private practice doing pro bono work | 47% | 50% | 49% | 43% |
| Estimated number of solicitors offering pro bono | 41,251 | 43,420 | 44,250 | 39,142 |
| Estimated financial value based on figures averaged across the profession | £513m | £529m | £601m | £592m |
| Total turnover | £19bn ⁵ | £21bn ⁶ | £23bn ⁷ | £25bn ⁸ |
| Estimated % of total turnover | 2.7% (1.1% median) | 2.5% (1.9% median) | 2.6% (2.2% median) | 2.4% (2.8% median) |
| Total number of pro bono hours by private practitioners hours | 2.0m hours | 2.0m hours | 2.3m hours | 2.1m hours |

Source: PC Holder Survey 2015, p11.

- This compares to an estimate of 2013-14 of £601m which was equivalent to approx. 2.7% of the total turnover generated by solicitor firms in 2014-15
- Based on the 268 private practice respondents providing their nos of PB hrs during the past 12 mths and their charge out rate

B. Barristers

i. Demographic¹⁶³

The bar is a much smaller profession than the solicitors and it has expanded at a slower rate. Between 2010 and 2017 the number of practising barristers, including QCs, rose from

around 15,000 to around 16,500. Over the same time frame the number of employed barristers also rose from around 2,700 to 2,900. There were around 1,800 self-employed QCs between 2009 and 2011, but numbers began to gradually decline; to around 1,600 in 2017.

ii. Data collection

The Bar Standards Board (BSB) ran its *Biennial Survey* in 2013, which included statistics on *pro bono* work.¹⁶⁴ However, in 2014, prompted by several issues with the survey as it stood,¹⁶⁵ a decision was taken not to continue with it. And though much of the information on the makeup of the Bar is now covered in other publications, it does not currently publish or collect any data on *pro bono* work. In 2016 the Bar Council ran a survey about *pro bono* work, but the response rate was too low to provide any meaningful data. The Bar Pro Bono Unit, collects some information, but this is not comprehensive. Indeed it was only in February 2017 that the BPBU announced its intention to send an individualised overview to every chambers that supports it, in order to report on ways those chambers contribute to the Unit.¹⁶⁶ As a result, the Bar has no comparable data for more recent years or data that compares with the Law Society's Annual PC Holders Survey.

The BSB are keen to fill the data gap in the future and are currently reviewing what information on the profession needs to be collected and published. This may lead to changes to the information it aims to collect from barristers and how this information is collected. For example, in 2017 the Board plans to add a question to the Authorisation to Practice process on amount of *pro bono* work barristers undertake.¹⁶⁷ As a result the statistical information contained in this section is more limited than that on solicitors' involvement in *pro bono*.

iii. Involvement in pro bono activity

Membership of the BPBU jumped significantly in the years following LASPO 2012. In 2011 the BPBU reported over 2,000 barrister members including more than 250 QCs. In 2013 this had risen to 3,300 members, including one third of all QCs. In 2016, BPBU had 3,749 volunteer barristers on its panel. Membership does not necessarily involve working on cases, since this depends on referrals. The barristers' working lives survey did find that 39 per cent of those interviewed had undertaken some legal *pro bono* work in 2013.

The BPBU is keen to refresh its pro bono offering and re-engage the Bar at all levels, so recently launched its FABFeb (Find A Barrister February) campaign, which saw it contacting all heads of chambers, senior clerks and chambers directors at barristers sets with over 20 members, asking them to appoint a pro bono champion.¹⁶⁸ There are about 400 sets of chambers¹⁶⁹ and, by April 2018, 14 sets had stepped up to nominate their Champions.¹⁷⁰ The scheme officially launched at a special event in June,¹⁷¹ so this may see a wider uptake.

iv. Volume of activity

Some idea of the volume of activity can be gained from the annual reports of the different barrister pro bono organisations. In 2016 the BPBU had 2,169 requests for help, and matched 848 cases.¹⁷² In the year ending March 2015 1,200 cases were referred to FRU.¹⁷³ Representation in employment cases declined to March 2015, from 434 to 210, a drop of approximately 50 per cent.¹⁷⁴ This is almost certainly due to the introduction of employment tribunal fees in July 2013.¹⁷⁵ In 2016 1,500 cases were referred to FRU. It provided representation in 407 Social Security (SS) cases (37% of the SS cases referred).¹⁷⁶

Although the BPBU and FRU are obvious ways for barristers to provide pro bono services it is not the only way. As demonstrated in Table #, only 21 per cent of barristers

claiming to provide free legal work do so through participation in the BPBU. It is doubtful, however, that an accurate idea of barrister pro bono could be obtained by multiplying the BPBU caseload by a factor of five. More would need to be known about the details of arrangements before they could be counted as genuine pro bono work, for example, pro bono work accepted informally from a solicitor, the largest percentage category.¹⁷⁷

Table 7.2: Means by which barristers provide pro bono support

| Through what route do barristers provide pro bono support? | Percentage taking route | Range in hours volunteered |
|--|-------------------------|----------------------------|
| Bar Pro bono Unit | 21% | 1-100 hours pa |
| Other Schemes e.g. CLIPS etc. | 8% | 2-30 hours pa |
| Legal Advice Centres | 6% | 1-240 hours pa |
| Informally through a solicitor | 37.5% | 1-800 hours pa |
| Direct Access | 18% | 1-400 hours pa |
| Other | 14% | 2-300 hours pa |

Source: The Bar Council, *How do barristers provide pro bono support?*, *Bar pro bono hub*, (Jul. 6, 2018, 2:16), <https://www.barcouncil.org.uk/media-centre/campaigns/bar-pro-bono-hub>

v. Categories of work

The Barristers' Working Lives survey data set out in Table # produced unexpected results. For example, significant categories are criminal work for which legal aid is available and personal injury, for which new funding arrangements are available. Another surprise is a relatively large engagement by barristers in international pro bono work. It is not known how much of the work revealed overlaps with either BPBU or FRU caseloads.

Table 7.3: Number of hours of *Pro bono* work in 2012/13 by practice area (%)

| | Criminal (n=746) | Civil (n=746) | Personal negligence/ personal injury (n=215) | Commercial & Chancery (n=352) | Family (n=387) | International/ other (n=61) |
|--|------------------|---------------|---|----------------------------------|----------------|--------------------------------|
| | | | | | | |

| | | | | | | |
|----------|----|----|----|----|----|----|
| Zero | 67 | 53 | 59 | 66 | 66 | 57 |
| < 50 hrs | 19 | 31 | 34 | 29 | 30 | 30 |
| ≥ 50 hrs | 14 | 16 | 7 | 5 | 7 | 13 |
| Total % | 33 | 47 | 41 | 34 | 37 | 43 |

Source: IES/ERL 2013 as cited by The Bar Council, *supra* note 164, at 6,1 Table 5.7. Note the first biennial survey contains no reference to *pro bono* work.

vi. Profile of Barristers doing Pro bono Work?

The barristers' working lives survey found that, within the 39 per cent doing pro bono work, barristers with certain characteristics were more likely to be involved; they were self-employed rather than employed, of black and minority ethnic origin rather than white and relatively young rather than older.¹⁷⁸ The biggest difference was between barristers who were self-employed and those who were employed,¹⁷⁹ despite the fact that the BSB Handbook does not prevent employed barristers doing pro bono work.¹⁸⁰ This discrepancy may be because of insurance issues. All self-employed barristers must be members of the Bar Mutual Indemnity Fund whereas, generally speaking, employed barristers need not be insured if only providing services to their employers. They do however require insurance cover if they are providing legal services to others, including pro bono work.¹⁸¹ The Bar Council's recent call for Professional Indemnity Insurance to cover employed barristers was approved in November 2017.¹⁸² So, in time this gap may be reduced.

Table 7.4 Characteristics of Barristers Undertaking Pro Bono Work (2012/2013)

| Characteristic | Percentage | Percentage Difference |
|--|------------|-----------------------|
| Self Employed | 44 | 29+ |
| Employed | 15 | |
| Self Employed Disabled | 63 | 20+ |
| Self Employed without Disability | 43 | |
| BME | 48 | 10+ |
| White | 38 | |
| Dependent Children | 43 | 8+ |
| Without Dependent Children | 35 | |
| Young Bar < 8 years since call | | 12+ |
| 1—3 | 59 | |
| 4—7 | 47 | |
| Self-employed barristers qualifying aged 30 plus | 50 | 7+ |
| Self-employed barristers qualifying under 30 | 43 | |
| Self-employed civil barristers | 56 | |
| Self-employed barristers in the international/EU/ other practice area | 67 | |
| QCs | 45% | |

Conclusion

In our analysis it would not be true to say that the development of pro bono in England and Wales is the consequence of an unbroken historical tradition. Indeed, we argue that there are distinct phases in the development of the pro bono culture of the legal profession and that the current phase is not like those preceding it. This current phase is characterised by marked increase in levels of activity, particularly in solicitors' pro bono contributions which apparently increased from £124 million in 1997 to £600 million in 2014. Bearing in mind that the 1997 figure was probably inflated by the wide definition of pro bono used, and that the 2014 figure is based on the more restricted definition in the pro bono protocol, this growth is striking. We suggest that it is partly due to the growth of pro bono infrastructure and a more positive culture of pro bono which this has engendered.

At the end of our research into pro bono in the 1990s we observed that the legal profession had potentially embarked on a new direction in the conception and delivery of pro bono. This was marked by the formation of the BPBU, very much an initiative of the professional body,

and the SPBG, very much an initiative of large firms. The period since the millennium has seen several developments that might be seen as attempts to engage the whole solicitors' profession. The A-GPBU sought to involve both professional bodies more directly in pro bono. As part of this initiative it brokered an Annual Pro Bono week. The success of this strategy may be measured by the belated launch of a Law Society pro bono initiative.

The issue of a protocol by the A-GPBC helped to clearly define pro bono work as essentially legal and distinctively voluntary. It also helped to rescue the term from the risk of redefinition as proposed by the Law Society Working Party and from the risk of being subsumed within the general concept of corporate philanthropy used by CSR, as LawWorks, the SPBG has sought to emphasise the pure definition of pro bono and to be inclusive in terms of its membership. It has stressed the importance of large firms delivering legal services as part of their CSR programmes and built on its connections with the advice network to become more active in the delivery of services. Its annual awards seek to recognise the efforts of different parts of the profession. In its secondary specialisation scheme it tries to blend the resources of large practice with the expertise of former legal aid practitioners to preserve expertise in the social welfare field in the face of legal aid cuts.

Our analysis points to there being a new culture of pro bono in England and Wales. This builds on pre-existing models but has a wholly new infrastructure and is based on broader engagement from all the major players. Regarding the aetiology of this new movement, there is some evidence that this phase may have originally resulted from pressure, particularly from Labour politicians, to demonstrate that the legal professions could contribute to Tony Blair's 'third way'. One of the risks of the large firms' response was that pro bono would be subsumed within a broader philanthropic concept, corporate social responsibility. Although there is some recent evidence of this happening, confusion of pro bono with other

philanthropic activity was largely avoided by widespread acceptance of the pro bono protocol proposed by the A-GPBC and by the SPBG's efforts.

Our earlier work noted that the diverse pressures (from politicians, clients, NGOs and others) and motives (altruism, rights building and skills acquisition) led inevitably to the conclusion that *pro bono publico* could only be described as 'mixed motive altruism'.¹⁸³ With hindsight we think that this explanation is only valid if pro bono is viewed from a distance. The closer the focus on the actual situation the clearer the different motives of different actors appear. Politicians more or less demanded a contribution by lawyers to replacing legal aid. The Bar and large law firms responded fairly quickly and the Law Society has done so over time. Many more lawyers than were previously engaged in pro bono have responded positively to the call.

The professions have worked with elements of government to provide infrastructure to support pro bono. This provides motivation, guidance and recognition of practitioners engaged in pro bono work, many of whom would probably be positively motivated without the infrastructure of support and recognition. We conclude that developments in England and Wales over the past 20 years have enabled the professional community of lawyers to move towards a common conception of what constitutes pro bono, to maintain an institutional commitment to its continuance and, hence, to ground a credible claim to support the rule of law.

Appendix: The Pro Bono Protocol

The Pro Bono Protocol was developed to promote and support consistently high standards of pro bono work. The protocol in no way replaces but rather seeks to build upon the Professional Codes of Conduct that set out the standards and requirements that all lawyers must achieve and observe.

The Protocol was developed under the auspices of the Attorney General's Pro Bono Coordinating Committee and has been endorsed by the Law Society of England and Wales, Bar Council of England and Wales and Chartered Institute of Legal Executives.

At all stages throughout their career many lawyers regard Pro Bono Legal Work as an integral part of being a member of the legal profession, in providing access to justice and meeting unmet legal need.

This Protocol has been agreed to set out the core values of such work and to assist both those who undertake it and their clients.

Many lawyers undertake charitable work of many different kinds. However, the purpose of this protocol is to concentrate specifically on the provision by lawyers of their legal knowledge and skills in the form of Pro Bono Legal Work.

1. What is Pro Bono Legal Work?

1.1. When we refer to Pro Bono Legal Work we mean legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public and alternative means of funding are not available.

1.2. Legal work is Pro Bono Legal Work only if it is free to the client, without payment to the lawyer or law firm (regardless of the outcome) and provided voluntarily either by the lawyer or his or her firm.

1.3. Pro Bono Legal Work is always only an adjunct to, and not a substitute for, a proper system of publicly funded legal services.

2. How should Pro Bono Legal Work be done?

2.1. Pro Bono Legal Work should always be done to a high standard. That means in particular that:

2.2. The availability of appropriate publicly funded legal advice or representation and opportunities for alternative funding should always be considered before a lawyer undertakes Pro Bono Legal Work.

2.3. When a lawyer is requested to agree to undertake a piece of Pro Bono Legal Work the lawyer should give his/her decision within a reasonable time.

2.4. The terms on which the Pro Bono Legal Work is undertaken including the circumstances in which the relationship may be terminated should be made clear at the outset.

2.5. The Pro Bono Legal Work should only be undertaken by a lawyer who is adequately trained, has appropriate knowledge, skills and experience and, where necessary, is adequately supervised for the work in question.

2.6. The lawyer undertaking a piece of Pro Bono Legal Work (and where appropriate his or her supervisor) should have no less than the minimum level of legal expertise and experience as would be required if the particular work in question was paid work.

2.7. In no case should the client be misled as to the lawyer's skill or ability to undertake the Pro Bono Legal Work.

2.8. Once a lawyer has agreed to undertake a piece of Pro Bono Legal Work the lawyer (and if appropriate his or her firm) must give that work the same priority, attention and care as would apply to paid work.

2.9. Pro Bono Legal Work must not be undertaken without appropriate insurance.

2.10. A lawyer in doubt or difficulty in relation to a piece of Pro Bono Legal Work should seek advice from a Pro Bono organisation or from the Bar Council, the Law Society or the Chartered Institute of Legal Executives.

2.11. Lawyers undertaking Pro Bono Legal Work should advise their client of the risk of an adverse costs order if the client is unsuccessful. Equally they should consider whether a “pro bono costs order” under section 194 of the Legal Services Act 2007 in favour of The Access to Justice Foundation is available if the client is successful.

3. What about other ways in which lawyers use their legal knowledge or their legal skills?

3.1. The profession also supports further ways in which lawyers use their legal knowledge or their legal skills, without charge, for public benefit. Examples of using their legal knowledge include providing the community with access to legal information and education through legal literacy projects, citizenship work and other forms of public legal education. Examples of roles in which professional skills might usefully be deployed include acting on the board of trustees for a charity or as a school governor.

3.2. A professional approach is important here as elsewhere. The lawyer’s contribution should be made to a high standard and with proper commitment. Suitable training should be undertaken where appropriate.

Ancillary Provisions

1. RELATIONSHIPS BETWEEN PRO BONO ORGANISATIONS AND LAWYERS

1.1. Where practical, lawyers able to undertake pro bono work are encouraged to do so through a pro bono organisation, through the not-for-profit sector, or through both.

1.2. Pro Bono Legal Work will be more effectively delivered through co-ordinating the relationships between lawyers, pro bono organisations, and not-for-profit agencies such as Law Centres and CABx.

1.3. When a lawyer is asked by a pro bono organisation or not-for-profit agency to undertake a particular piece of Pro Bono Legal Work, the lawyer is expected to have proper regard to any prior confirmation given to the pro bono organisation or not-for-profit agency that the lawyer was prepared to undertake Pro Bono Legal Work.

1.4. Sets of chambers, law firms and legal departments should, wherever possible, seek to encourage and support the undertaking of appropriate Pro Bono Legal Work by their lawyers, including the undertaking of that work "in-house".

2. THE CONTRIBUTION OF PERSONS WHO ARE NOT QUALIFIED, OR ARE UNABLE TO DO PRO BONO LEGAL WORK

2.1. Non-lawyer staff within a set of chambers or a firm should be enabled to make the same contribution to the undertaking of a piece of Pro Bono Legal Work as they would for a piece of paid work.

2.2. Law students, pupil barristers and trainee solicitors have an important contribution to make to Pro Bono Legal Work. However that contribution must be properly supervised and must be preceded by proper training.

2.3. Where suitably qualified and experienced, academic lawyers and employed lawyers are particularly encouraged to consider providing training to others to enable them to undertake Pro Bono Legal Work if they are not able themselves to provide legal advice or representation. The provision of pro bono legal training without charge is an important contribution to Pro Bono Legal Work.

3. PARTICIPATION IN PRO BONO LEGAL WORK AS A CHARACTERISTIC OF BEING A MEMBER OF THE LEGAL PROFESSION

3.1. A commitment to the delivery of Pro Bono Legal Work is encouraged throughout a lawyer's professional life, as a student and in practice, through to and including retirement.

¹ See e.g. ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES: WITH PARTICULAR REFERENCE TO THE DEVELOPMENT OF BAR ASSOCIATION IN THE UNITED STATES* (1953) and discussion in ANDREW BOON & JENNIFER LEVIN, *THE ETHICS AND CONDUCT OF LAWYERS IN ENGLAND AND WALES* Ch 15 (1999).

² Lorne Sossin, *The Public Interest, Professionalism and Pro Bono*, 46 *OSGOODE HALL L.J.* 131 (2008).

³ See MAGALI S. LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* (1977), Andrew Abbott *Jurisdictional Conflicts: A New Approach to the Development of Legal Professions* 11 *AM.B.FOUND.RES.J.* 187 (1986), Richard L. Abel, *The Decline of Professionalism?* 49 *M.L.R.* 1 (1986), Richard L. Abel, *Between Market and State: The Legal Profession in Turmoil*, 52 *M.L.R.* 285 (1989).

⁴ Richard L. Abel, *Why does the ABA Promulgate Ethical Rules?* 59 *TEX.L.REV.* 639 (1981).

⁵ Alan A. Paterson, *Professionalism and the Legal Services Market*, 1/2 *I.J.L.P.* 137 (1996), Terry Johnson, *Expertise and the State in*, *FOUCAULT'S NEW DOMAINS* 139 (Mike Gane & Terry Johnson eds., 1993) and RICHARD L. ABEL, *ENGLISH LAWYERS BETWEEN MARKET AND STATE: THE POLITICS OF PROFESSIONALISM* (2003).

⁶ DONALD NICOLSON AND JULIAN WEBB, *PROFESSIONAL LEGAL ETHICS: CRITICAL INTERROGATIONS* (2000).

⁷ BOON, *supra* note 1, at 541.

⁸ See, Andrew Boon & Avis Whyte, *SOMETHING FOR NOTHING?: THE PROVISION OF LEGAL SERVICES PRO BONO PUBLICO* (2001), Andrew Boon & Avis Whyte, *Charity and Beating Begins at Home: The Aetiology of the New Culture of Pro Bono Publico*, 2(2) *LEGAL ETHICS* 169 (1999); Andrew Boon & Avis Whyte, *PRO BONO PUBLICO: PROBLEMS AND POSSIBILITIES: FULL REPORT* (unpublished report submitted to the Nuffield Society in

1999); Robert Abbey and Andrew Boon, *The Provision of Free Legal Services by Solicitors: A Review of the Report of the Law Society's Pro bono Working Party*, 2 I.J.L.P 26 (1995), Andrew Boon and Robert Abbey *Moral Agendas?: Pro Bono Publico in Large Law Firms in the United Kingdom*, 60 M.L.R 630 (1997).

⁹ Although many aspects of traditional demarcation between the professions have broken down, it is still true to say that solicitors can operate in partnerships or as sole practices and are the larger profession. Barristers meanwhile are self-employed advocacy specialists whose preferred practice mode is to be briefed by solicitors to advise or appear in court. The Law Society is the independent professional body for solicitors and the Bar Council represents barristers in England and Wales, *see* <http://www.lawsociety.org.uk> and <https://www.barcouncil.org.uk>.

¹⁰ JA Brundage, *Legal Aid for the Poor and the Professionalisation of Law in the Middle Ages*, 9 J.LEG.HIST. 169 (1988).

¹¹ A right to sue *in forma pauperis* was established by statute in 1495 but probably has earlier origins, *see* John M. Maguire, *Poverty and Civil Litigation*, 36 HARV.L.REV 361 (1923). A similar example of court assigned advocates is the dock brief in criminal trials, whereby the judge asks an advocate to appear for an unrepresented defendant, *see* WILFRID R. PREST, *THE RISE OF THE BARRISTERS: A SOCIAL HISTORY OF THE BAR 1590-1640* at 22 (1986).

¹² Lord Willy Bach (chair) *The Right to Justice: The Final Report of the Bach Commission* (2017), Appendix 6: The History of Legal Aid 1945-2010 by Sir Henry Brooke.

¹³ Thomas Erskine famously represented Tom Paine pro bono when he was charged with seditious libel in connection with publication of *The Rights of Man*, JOHN HOSTETTLER, *THOMAS ERSKINE AND TRIAL BY JURY* 89 (2010).

¹⁴ Bach, *supra* note 12.

¹⁵ Tamara Goriely, *Gratuitous assistance to the 'ill-dressed': debating civil legal aid in England and Wales from 1924 to 1939*, 13 I.J.L.P 41 (2006). This earlier history is covered in detail elsewhere (see Boon, *supra* note 1).

¹⁶ Lord Chancellor's Office, *Committee to Enquire into Poor Persons Rules 1919* (Jul. 4, 2018, 10.04 AM), <http://discovery.nationalarchives.gov.uk/details/r/C10270>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Some poor man's lawyers claimed a share of damages, R.F. Scott, *The Poor Man's Lawyer*, THE SPECTATOR, July 15, 1938, at 13. This was illegal under rules against maintenance and champerty (supporting or profiting from another's litigation).

²¹ Goriely, *supra* note 15.

²² GERARD HANLON, *LAWYERS THE STATE AND THE MARKET: PROFESSIONALISM REVISITED* (1999).

²³ Tamara Goriely, *Law for the Poor: The Relationship Between Advice Agencies and Solicitors in the Development of Poverty Law*, 3 I.J.L.P 215 (1996).

²⁴ Lynda Hiscock and Godfrey Cole, *The Motivation, Use and Future of Volunteer Lawyers in Law Centres*, 12:6 J.S.W.L 404 (1990).

²⁵ Barristers might have hoped that they would later be briefed to appear in cases referred to local solicitors.

²⁶ MICHAEL ZANDER, *RESTRICTIONS ON LAWYERS WORKING FOR THE POOR' IN LAWYERS AND THE PUBLIC INTEREST: A STUDY OF RESTRICTIVE PRACTICES* 238 (1968).

²⁷ Robert Verkaik, *Law: Last appeal to a lost empire*, THE INDEPENDENT, May 25, 1999 (Jul. 5, 2018, 11.00AM), <https://www.independent.co.uk/arts-entertainment/law-last-appeal-to-a-lost-empire-1095796.html>.

²⁸ For this and further information in this paragraph, *see* Boon, *supra* note 1.

²⁹ FRU is authorised by the Bar Council in relation to each of the tribunals in which its representatives appear.

³⁰ There was also a student run clinic offering advice to students at Kent University, which now also provides advice to local people (Jul. 3, 2018, 11.04AM), <https://www.kent.ac.uk/law/clinic>.

³¹ Andrew Boon, Michael Jeeves and Julie Macfarlane, *A Working Model for Clinical Legal Education: Testing the Definition against a Range of Examples*, 21 THE LAW TEACHER 172 (1987).

³² Brooke, *supra* note 12. The Legal Aid Board was replaced by the Legal Aid Commission in 2000, which was in turn was replaced by the current Legal Aid Agency in 2013, Brooke *id.*

³³ As regards monopolies, for example, by the introduction of a conveyancing profession in the 1980s and by allowing solicitors to compete with barristers for higher court advocacy in the 1990s. As regard powers, by the requirement that legal professions separate representative and regulatory functions (*see* Andrew Boon *England and Wales: A Cocktail of Strategies for Legal Services Reform* in, INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES (Andrew Boon ed., 2017).

³⁴ REPORT OF THE LAW SOCIETY'S *PRO BONO* WORKING PARTY 1994.

³⁵ Law Society Gazette, *For love -- not money -- an assessment of free work already conducted by solicitors*, LAW SOCIETY GAZETTE, Oct. 25, 1995, <https://www.lawgazette.co.uk/news/for-love-not-money-an-assessment-of-free-work-already-conducted-by-solicitors-/20121>.

³⁶ Law Society Gazette, *Labour Creates Future Vision*, LAW SOCIETY GAZETTE, Feb. 22, 1995, at 68 and Law Society Gazette, *Pro bono Wrangle*, LAW SOCIETY GAZETTE, 93(46), Dec. 13, 1996, at 6.

³⁷ Volunteerism was the core of GW Bush's presidential nomination acceptance speech in 1988, <http://www.presidency.ucsb.edu/ws/?pid=25955> and, in the UK, of Tony Blair's Third Way, launched at a meeting of Blair and Bill Clinton in New York in September 1998, Anne Mellbye, *A brief history of the third way*, THE GUARDIAN, Feb. 10, 2003, <https://www.theguardian.com/politics/2003/feb/10/labour.uk1> and Prime Minister, David Cameron's Big Society, David Cameron, *Big Society Speech*, Jul. 20, 2010 <https://www.gov.uk/government/speeches/big-society-speech>.

³⁸ Mellbye, *id.*

³⁹ *Id.*

⁴⁰ Iain Hollingshead, *Whatever happened to the Third Way?*, THE GUARDIAN, Oct. 29, 2005, <https://www.theguardian.com/politics/2005/oct/29/labour.uk>.

⁴¹ Abbey & Boon, *The Provision of Free Legal Services by Solicitors*, *supra* note 8.

⁴² *Id.*

⁴³ Especially the regional schemes run on the Northern Circuit, Western Circuit and Wales and Chester Circuit, and the schemes run by subject area Bar Associations, e.g., the Employment Law Bar Association Scheme, the Planning Bar Association's Free Advocacy Scheme and Environmental Legal and Mediation Service, Vanessa Sims, '*Legal Education and Practice Pro bono at the Bar*', 4 AMICUS CURIAE 21(1998) available at <http://sas-space.sas.ac.uk/3714/1/1615-2019-1-SM.pdf>.

⁴⁴ *Id.*

⁴⁵ See <https://barprobono.org.uk/overview.html>

⁴⁶ *Id.*

⁴⁷ Letter from Andrew Phillips dated October 1999, *see further* Boon & Whyte, *Charity and Beating*, *supra* note 8, at 176.

⁴⁸ Matheu Swallow, *Who is Behind Pro bono?*, THE LAWYER, Sept. 27, 1999

⁴⁹ In the Companies Act 1965 (*see* John Flood, *Mega-law in the UK' Professionalism or Corporatism?: A Preliminary Report*, 64 IND.L.J. 569 (1989).

⁵⁰ The Lawyer, *Solicitors vote for boost to Pro bono*, THE LAWYER, Nov. 12, at 1 (1996).

⁵¹ Archie B. Carroll, *A History of Corporate Social Responsibility: Concepts and Practices* in, THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY, at 19 (Andrew Crane ed., 2009).

⁵² Ronen Shamir, *Socially Responsible Private Regulation: World-Culture or World-Capitalism?*, 45(2) LAW AND SOCIETY REVIEW 313 (2011).

⁵³ Joel Bakan, *The Invisible Hand of Law: Private Regulation and the Rule of Law*, 48(2) CORNELL INT'L L.J. 279 (2015).

⁵⁴ BITC, Our History, About Us (Jul. 5, 2018, 09.02AM) <https://www.bitc.org.uk/about-us/what-we-do/our-history>).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Archie B. Carroll, *The pyramid of corporate social responsibility: toward moral management of organizational stakeholders*, 34:4 BUSINESS HORIZONS 39 (1991).

⁵⁹ *See further* Constantina Bichta, RESEARCH REPORT 16 CORPORATE SOCIAL RESPONSIBILITY A ROLE IN GOVERNMENT POLICY AND REGULATION, 9-11 (2003).

⁶⁰ Sally Wheeler & G Wilson, *Corporate Law Firms and the Spirit of Community*, 49:3 NILQ 241 (1998).

⁶¹ Though we were not told, we surmised that the remaining members of the PFG were accountants, engineers, architects, estate agents.

⁶² The Lawyer, *Pro bono—where next?*, THE LAWYER, Oct. 15, 1996 (Jul. 6, 2018, 07:39), <https://www.thelawyer.com/pro-bono-where-next>.

⁶³ The Lawyer, *Solicitors Vote for Boost to Pro bono*, THE LAWYER, Nov. 12, 1996 (Jul. 6, 2018, 07:40)

⁶⁴ *See further*, The Bar Council, *About Barristers* <https://www.barcouncil.org.uk/about-the-bar/about-barristers>.

⁶⁵ The Bar Pro Bono Unit, THE EVOLUTION OF THE BAR PRO BONO UNIT: ANNUAL REVIEW 2016, at 3 (2016), https://www.barprobono.org.uk/public/downloads/XyJXX/FINAL_BarProBono_AnnualReview_2016_DIGITALSPREADS.pdf.

⁶⁶ By 1998 the number had crept up to 800, including 130 QCs, Sims, *supra* note 43. In 2002, 1,220 barristers were registered, Sally Weale and Clare Dyer, *Heard the one about the lawyer who works for nothing...* THE GUARDIAN, Jun. 11, 2002.

⁶⁷ The Bar Pro Bono Unit, *Overview*, <https://www.barprobono.org.uk/overview.html>.

⁶⁸ S Solley & R D’Cruz, *Deliverance from Death Row?*, COUNSEL Oct. 1998, at 22.

⁶⁹ The Unit itself does not provide any legal advice or assistance or ‘instruct’ counsel, *supra* note 67.

⁷⁰ In 2001 Allen and Overy claimed 12,232 hours and Clifford Chance 18,000 hours per annum, Lucy Hickman, *Pro plus*, 98(28) LAW SOCIETY GAZETTE, Jul. 13, 2001 (Jul. 6, 2018, 8:16AM) <https://www.lawgazette.co.uk/news/pro-plus/34465.article>.

⁷¹ Law Society, REPORT OF THE LAW SOCIETY'S PRO BONO WORKING PARTY (1994) Annex C para.1.

⁷² Hiscock & Cole, *supra* note 24. This was significantly fewer than the 3,000 solicitors which the Benson report estimated were supporting advice agencies in 1979, ROYAL COMMISSION ON LEGAL SERVICES. CHMN SIR H BENSON: FINAL REPORT (1979).

⁷³ Boon & Levin, ETHICS AND CONDUCT, *supra* note 1, at 233, citing Law Society Press release.

⁷⁴ At that time they had a mean number of 48 partners, 172 associates and 42 trainees.

⁷⁵ Marc Galanter & Thomas Palay, *Large Law Firms and Professional Responsibility* in, LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY 189-202 (Ross Cranston ed., 1995).

⁷⁶ Boon & Whyte, *Something for Nothing?* at 1, *supra* note 8.

⁷⁷ Goldsmith became a Labour life peer in 1999 and Attorney General to Blair's government in 2001.

⁷⁸ Boon & Whyte, *Charity and Beating*, at 182, *supra* note 8.

⁷⁹ Andrew Phillips, *A want of experience*, LAW SOCIETY GAZETTE, Apr. 28, 1999, cited in Boon & Whyte, *Charity and Beating*, at 182, *supra* note 8.

⁸⁰ The Lawyer, *Labour Suggests Levy to Support Legal Assistance*, THE LAWYER, Sept. 27, 1994 at 3 and The Lawyer, *Labour Eyes US Pro bono Model*, THE LAWYER, Nov. 8, 1994, at 2.

⁸¹ David Grayson, *Business-Led Corporate Responsibility Coalitions: Learning from the example of Business in the Community in the UK* 17 (2007), https://sites.hks.harvard.edu/m-rcbg/CSRI/publications/report_26_GraysonBus-LedCRCoalitions.pdf.

⁸² See, e.g., Lord Chancellor's Department, MODERNISING JUSTICE: THE GOVERNMENT'S PLANS FOR REFORMING LEGAL SERVICES AND COURTS (1998), Gary Slapper, *Modernising Justice* [1999] SLRYB 81 and Karen Mackay, *Evaluating the Community Legal Service*, NLJ 615, 2001.

⁸³ Brooke 14-20, *supra* note 12.

⁸⁴ See Boon, *supra* note 33.

⁸⁵ Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), s.45.

⁸⁶ Civil Procedure Rules 1998.

⁸⁷ Lord Justice Briggs, CIVIL COURTS STRUCTURE REVIEW: FINAL REPORT, at 36 (2016),

[https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-](https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf)

1.pdf. The online pilot civil claims has now gone live and spread across England and Wales, *see* HM Courts &

Tribunal Service, *Quicker way to resolve claim disputes launched online*, Press Release, Apr. 6, 2018 (Jul. 6,

2018, 9.:09AM) <https://www.gov.uk/government/news/quicker-way-to-resolve-claim-disputes-launched-online>

and Eversheds Sutherland, *Online civil claims pilot now public across England and Wales*, Apr. 24 2018 (Jul. 6,

2018, 9.:11AM) www.eversheds-

sutherland.com/global/en/what/articles/index.page?ArticleID=en/Litigation_Support/online-civil-claims.

⁸⁸ Catherine Baksi, *Civil legal aid: Access denied*, LAW SOCIETY GAZETTE, Apr. 7, 2014 (Jul. 6, 2018, 9.14AM)

<https://www.lawgazette.co.uk/law/civil-legal-aid-access-denied/5040722.article>.

⁸⁹ Legal Services Commission, ANNUAL REPORT AND ACCOUNTS 2012-2013, at 23 (2013).

⁹⁰ Legal Aid Agency, ANNUAL REPORT AND ACCOUNTS 2013-2014, at 19 (2014).

⁹¹ *Supra* note 89.

⁹² *Supra* note 90.

⁹³ Government acknowledged that in April 2013 the LASPO Act had resulted in large reductions in legal help

workload and that the overall trend had subsequently levelled out at around one-third of pre-LASPO levels,

Ministry of Justice Statistics bulletin, LEGAL AID STATISTICS IN ENGLAND AND WALES APRIL TO JUNE 2016,

Ministry (2016), <https://www.gov.uk/government/statistics/legal-aid-statistics-april-to-june-2016>.

⁹⁴ Legal Services Board, MARKET FINANCIALS: TURNOVER AND PROFITABILITY (Jul. 6, 2018, 9:24),

<https://research.legalservicesboard.org.uk/analysis/supply/market-financials/turnover-and->

profitability.

⁹⁵ Press release from the Attorney General's Chambers 23rd April 2002, V MacCallum, *Lord Goldsmith unveils pro bono drive to co-ordinate work across the country*, 99(17) LAW SOCIETY GAZETTE, Apr. 25, 2002.

⁹⁶ President of the Law Society (2001)

⁹⁷ The term pro bono, caused persistent definitional issues, see LawWorks, *The Pro Bono Protocol* (Jul. 6, 2018, 9:39AM) <https://www.lawworks.org.uk/why-pro-bono/what-pro-bono/pro-bono-protocol>, the Bar Pro Bono Unit, *Joint Protocol for Pro Bono Legal Work* (Jul. 6, 2018, 9:45AM), http://www.barprobono.org.uk/pro_bono_protocol.html and V MacCallum, *Attorney-General unveils protocol that sets out key elements of pro bono work*, 100(13) LAW SOCIETY GAZETTE, Apr. 3, 2003, at 4 and Michael Napier, *Delivering hope on pro bono*, *id.*, at 13).

⁹⁸ LawWorks, *The pro bono protocol* (Jul. 6, 2018, 9:53AM), <https://www.lawworks.org.uk/why-pro-bono/what-pro-bono/pro-bono-protocol>.

I. ⁹⁹ Under the indemnity principle the losing party in litigation is only liable for costs actually incurred by the winner. Under the Legal Services Act 2007 s.194 a pro bono costs order could be made against a losing party where a case has been won with pro bono help, and the losing party would otherwise have escaped liability for costs. See also Civil Procedure Rule 46.7 and Practice Direction 46—Costs Special Cases: Personal liability of legal representative for costs—wasted costs orders: rule 46.8, 4.1 (a party who has pro bono representation prepare, file and serve a written statement of the sum equivalent to the costs that party would have claimed for that legal representation had it not been provided free of charge).

¹⁰⁰ The charity prescribed by the Lord Chancellor to receive sums raised by pro bono costs orders is the Access to Justice Foundation (AJF), *The Legal Services Act 2007 (Prescribed Charity) Order*

2008 (No. 2680, 2008). *See further* LSA 2007 s.194(3) and (8) and Access to Justice Foundation, *Pro bono costs* (Jul. 6, 2018, 10:11AM), <http://www.atjf.org.uk/pro-bono-costs-orders.html>.

¹⁰¹ *See The Joint Protocol for Legal Work*, <http://www.lawsociety.org.uk/Support-services/Practice-management/Pro-bono/The-pro-bono-protocol>, which also carries the protocol as an appendix.

¹⁰² The Law Society of England and Wales, *PRO BONO MANUAL: A PRACTICAL GUIDE AND RESOURCE KIT FOR SOLICITORS* (2016), <http://www.lawsociety.org.uk/support-services/practice-management/pro-bono/pro-bono-manual>.

¹⁰³ The ‘third branch’ of the legal profession in England and Wales, *see further* Chartered Institute of Legal Executives, <https://www.cilex.org.uk>.

¹⁰⁴ For protocol signatories *see* LawWorks, *Protocol Signatories*, <https://www.lawworks.org.uk/why-pro-bono/pro-bono-protocol/protocol-signatories>.

¹⁰⁵ The Law Society Gazette, *Power of pro bono*, 99(17) LAW SOCIETY GAZETTE, Apr. 25, 2002.

¹⁰⁶ **He became the leader of European litigation in the City office of, Debevoise & Plimpton LLP, an American corporate firm, in 2007, Clare Dyer, *So Lord Goldsmith, what first attracted you to the £1m-a-year job at a US law firm?*, THE GUARDIAN, Sept. 27, 2007 (Jul. 6, 2018, 10:11AM), <https://www.theguardian.com/politics/2007/sep/27/uk.topstories31>.**

¹⁰⁷ The Lawyer, *BPBU creates solicitor panel*, THE LAWYER, Jan. 28, 2002.

¹⁰⁸ Bar in the community, <http://www.barinthecommunity.org.uk>.

¹⁰⁹ The Solicitors *Pro bono* Group brochure (undated) as cited in Boon & Whyte, *Charity and Beating*, at footnote 9, *supra* note 8.

¹¹⁰ Clare Dyer, *Win or lose, no fee: pro bono week promotes free legal services*, THE GUARDIAN, Jun. 5, 2006, at 14.

¹¹¹ The National Pro Bono Centre, *About Us* (Jul. 6, 2018, 10:47), <http://www.nationalprobonocentre.org.uk/about-us>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ J Robins (ed.) THE PRO BONO YEARBOOK OF ENGLAND AND WALES (2013).

¹¹⁵ LawWorks, *LawWorks Secondary Specialisation Programme*, <https://www.lawworks.org.uk/system/files/Membership%20Pack%20Insert%20-%20LawWorks%20Secondary%20Specialisation%20Programme.pdf>.

¹¹⁶ The Welfare benefits first-tier support and advocacy scheme partners include, Islington Law Centre, Child Poverty Action Group (CPAG), volunteer solicitors from Norton Rose Fulbright LLP, Kirkland & Ellis LLP and Berwin Leighton Paisner (BLP) LLP, Clyde & Co and Sidley Austin LLP, to provide specialist assistance and advocacy at First-Tier Social Security Tribunals on Employment and Support Allowance (ESA) and Personal Independence Payments (PIP) appeals. More than 100 volunteer lawyers from affiliated firms have been trained by the CPAG (a leading training provider in social welfare law), *id.* The housing and community care services scheme involves work with the charity Together for Short Lives to support clients challenging local authority decisions in relation to housing allocations and community care services, *id.*

¹¹⁷ Steven Vaughan, Linden Thomas & Alastair Young, *Symbolism over substance? Large law firms and corporate social responsibility*, 18(2) LEGAL ETHICS 138 (2015).

¹¹⁸ LawWorks, *LawWorks Annual Pro Bono Awards*, <https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/lawworks-annual-pro-bono-awards>.

¹¹⁹ See Boon & Whyte, *Charity and beating*, at 108, *supra* note 8 and Joanna Goodman, *Corporate Social Responsibility—Community Spirit*, LAW SOCIETY GAZETTE, Oct. 4, 2016 (Jul. 3, 2018, 11:45),

<https://www.lawgazette.co.uk/features/corporate-social-responsibility--community-spirit/5058438.article>.

¹²⁰ Vaughan et al. *supra* note 117.

¹²¹ *Id.*

¹²² *Id.* Table 8, at 154.

¹²³ Vaughan et al, *supra* note 117, citing Edward Weeks, *Why Firms Should Embrace CSR*, THE LAWYER, Dec. 4, (2006).

¹²⁴ Vaughan et al.

¹²⁵ Interview by Andrew Boon in 2012.

¹²⁶ Andrew Boon & Peter Hodgkinson, *Life and Death in the Lawyer's Office: The Internship in Capital Punishment Studies*, 30(3) THE LAW TEACHER 253 (1996).

¹²⁷ Damian Carney, Frank Dignan, Richard Grimes, Grace Kelly & Rebecca Parker, THE LAWWORKS LAW SCHOOL PRO BONO AND CLINIC REPORT 2014, at p.10 (2014), <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf>.

¹²⁸ Frank Dignan, Richard Grimes and Rebecca Parker, *Pro Bono and Clinical Work in Law Schools: Summary and Analysis*, 14(1) *Asian Journal of Legal Education* 1, 4 (2017)

¹²⁹ *See further*, LawWorks, *LawWorks and Attorney General's Student Pro Bono Awards 2018*, <https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/lawworks-and-attorney-generals-student-pro-bono-awards-2018>.

¹³⁰ TBC.

¹³¹ Nottingham Trent University, *Business Law Advice service launched at Nottingham Law School*, <https://www.ntu.ac.uk/about-us/news/news-articles/2017/05/business-law-advice-service-launched-at-nottingham-law-school>.

¹³² Boon & Levin, ETHICS AND CONDUCT, *supra* note 1, at 567-8.

¹³³ Andrew Boon, *From public service to service industry: the impact of socialisation and work on the motivation and values of lawyers*, 12(2) I.J.L.P 193 (2005) and see Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L.REV. 2359 (2010).

¹³⁴ LawWorks, *Pro Bono Awards 2017: The LawWorks Annual Pro Bono Awards & Lecture*, <https://www.lawworks.org.uk/sites/default/files/LawWorks-AwardsBrochure2017-Final-Web-ready.pdf>.

¹³⁵ *See further*, Toynee Hall, *Women Only General Advice*, <http://www.toyneehall.org.uk/women-only-general-advice>.

¹³⁶ Bar Pro Bono Unit, *Bar Pro Bono Award 2017: Winner Announced!* (Jun. 18, 2018, 2:04PM) <https://www.barprobono.org.uk/tanya-murshed-winner-bar-pro-bono-award-2017.html>.

¹³⁷ These followed from the landmark Uganda Supreme Court decision, *Attorney General v Susan Kigula and 417 Ors* ((CONSTITUTIONAL APPEAL NO. 03 OF 2006)) [2009] UGSC 6 (21 January 2009), which held that automatic death sentences were unconstitutional, *available at* <https://ulii.org/node/15313>.

¹³⁸ Murshed, for example, launched an organisation called Evolve and trained Ugandan law students to collect evidence and mitigation for re-sentencing appeals, *see further* Evolve, *Tanya Murshed*, <https://evolvefila.org/founder/>.

¹³⁹ Two other core funders are sets of chambers, “Platinum Friends in Law” and “Friends in Law”, Bar Pro Bono Unit, *supra* note 65, at 17.

¹⁴⁰ In 2016 over 50% of the Bar made this contribution during the Authorisation to Practise (ATP) process, including over 85% of QCs, with the majority of donations coming from the publicly funded bar, Bar Pro Bono Unit, *Authorisation to Practice Appeal*, Mar. 15, 2017 (Jul. 6, 2018, 12.46PM) <https://www.barprobono.org.uk/atp-appeal.html>.

¹⁴¹ Bar Pro Bono Unit, *supra* note 65 at 17.

¹⁴² *Id.*, at 3.

¹⁴³ Free Representation Unit, ANNUAL REPORT AND FINANCIAL STATEMENTS 31 MARCH 2016, at 3, available at <http://www.thefru.org.uk/sites/default/files/FRU%20Signed%20Accounts%202015-16.pdf>.

¹⁴⁴ Help was provided by the Bar Council (33%), the Inns of Court (26%), covenants from individual barristers (20%) subscriptions from referral agencies and income from training days, Counsel, *FRU—The Bars Contribution*, COUNSEL, Apr. 1994, at 23.

¹⁴⁵ Law Society Council Minutes 24 September, 1998.

¹⁴⁶ LawWorks, *Funders* (Jul. 6, 2018, 1:00PM), <https://www.lawworks.org.uk/about-us/funders>.

¹⁴⁷ See further Mark Smulian, *How the LawWorks project obtained its Big funding*, THE LAW SOCIETY GAZETTE, Mar. 3, 2006 (Jul. 6, 1:03PM), <https://www.lawgazette.co.uk/analysis/how-the-lawworks-project-obtained-its-big-funding/2776.article>.

¹⁴⁸ Hanlon, *supra* note 22.

¹⁴⁹ The Law Society, *Pro Bono Charter*, <http://www.lawsociety.org.uk/my-law-society/pro-bono-charter>.

¹⁵⁰ The Law Society, *Founding Signatories of the Law Society Pro Bono Charter*, Feb. 20, 2017 (Jul. 6, 2018, 1:10PM), <http://www.lawsociety.org.uk/news/press-releases/founding-signatories-law-society-pro-bono-charter>.

¹⁵¹ The Law Society, *Pro Bono Charter*, *supra* note 149 at 2.

¹⁵² **The Law Society, *Founding signatories*, *supra* note 150 at 2.**

¹⁵³ The Law Society, *Pro Bono Charter*, *supra* note 149.

¹⁵⁴ The Law Society, *Founding signatories*, *supra* note 150.

¹⁵⁵ Law Society, TRENDS IN THE SOLICITORS' PROFESSION: ANNUAL STATISTICAL REPORT 1999 (2000) and Solicitors Regulation Authority, *Regulated Population Statistics* (Jul. 6, 1:19PM), https://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page.

¹⁵⁶ The Solicitors Regulation Authority, *id.*

¹⁵⁷ Law Society, TRENDS IN THE SOLICITORS' PROFESSION: ANNUAL STATISTICAL REPORT 2015 at 44 (2016).

¹⁵⁸ *Id.*, 42.

¹⁵⁹ The PC Holder Survey has been primarily been a vehicle for the Law Society's Corporate Responsibility, Equality and Diversity and Inclusion (CREDI) team to collect data on the protected characteristics of the profession, working hours and earnings.

¹⁶⁰ Private practice solicitors were more likely to report having adequate opportunity to do PB work (63%), than those in the employed sector (44%) or government (26%), The Law Society, THE PRO BONO WORK OF SOLICITORS—PC HOLDER SURVEY, 2015 at 4.

¹⁶¹ Some such outliers are mentioned in the Annual Pro Bono awards. For example, Tanya Murshed, *supra* note 138, apparently spend a quarter of her working time on her pro bono project.

¹⁶² Boon & Whyte, *Charity and beating*, *supra* note 8 at 179, footnote 68, citing a News release by the Law Society, Tuesday 14th October 1997.

¹⁶³ The statistics in this paragraph are taken from the data spreadsheet 2000 to 2017 found on the BSB, *Practising barrister statistics* page at (Jul. 4, 2018, 3:42), <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics>.

¹⁶⁴ Bar Standards Board, BARRISTERS' WORKING LIVES, A SECOND BIENNIAL SURVEY OF THE BAR 2013, https://www.barstandardsboard.org.uk/media/1597662/biennial_survey_report_2013.pdf.

¹⁶⁵ First, the survey was commissioned jointly by both the Bar Standards Board (BSB) and the Bar Council. It was felt that this led to issues with the design and publication of the survey as the information requirements of the regulatory and representative arms were different. In addition, it was felt that the areas of the survey which covered the main areas of interest to the BSB were – to a large extent – duplicating information the Council collected and published elsewhere (see for example statistical information published on its website, <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics>), and it was a more sensible use of resources to concentrate on improving the Council's own data collection. By improving the data the Council collected from barristers this would enable it to publish statistics on the whole profession, rather than relying on a survey sample that it could not be certain was representative. The information contained in this footnote was provided to us by the BSB Research Team (May 2017).

¹⁶⁶ Bar Council, *Guest blog: Bar Pro Bono Unit reports to each chambers for the first time*, Feb. 22, 2017 (Jul. 6, 2018, 1.51PM), <http://www.barcouncil.org.uk/media-centre/bar-blog/contributing-writers/2017/february/guest-blog-bar-pro-bono-unit-reports-to-each-chambers-for-the-first-time>.

¹⁶⁷ *Id.* The AtP process represents a more structure approach to barristers registration, bringing it into compliance with the Legal Services Act 2007, Bar Standards Board, *Authorisation to Practice*, (Jul. 6, 2018, 1:54) <https://www.barstandardsboard.org.uk/authorisation-to-practise>.

¹⁶⁸ Richard Simmons, *Landmark, Littleton and 7KBW among chambers appointing pro bono champions*, THE LAWYER, April 30, 2018, <https://www.thelawyer.com/bar-pro-bono-champions/?nocache=true&adfesuccess=1>.

¹⁶⁹ Bar Standards Board, *Chambers Statistics* (Jul. 6, 2018, 1:58PM) <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/chambers>.

¹⁷⁰ *Supra* n.168

¹⁷¹ *Id.*

¹⁷² The Bar Pro Bono Unit, *supra* note 65 at 3.

¹⁷³ Free Representation Unit, *supra* note 143, at 3. FRU works with over 200 referral agencies (Jul. 6, 2018, 2:05PM), <http://www.thefru.org.uk/get-advice/list-of-agencies>.

¹⁷⁴ *Id.*

¹⁷⁵ Indeed, this compares to the 60% decline in the tribunal's quarterly receipts over the same time span, *id.*

¹⁷⁶ Free Representation Unit, *supra* note 143, at 3.

¹⁷⁷ The way in which such arrangements operate is unclear. For example, are the solicitors themselves acting pro bono and, if so, do they brief barristers in a conventional way (i.e. through the barrister's chambers (and clerking system)?)

¹⁷⁸ The Bar Council, *id* at 62.

¹⁷⁹ *Id.*

¹⁸⁰ Bar Standards Board, *BSB Handbook Explained—Barristers working pro bono* (Jul. 6, 2018, 2:28PM), <https://www.barstandardsboard.org.uk/regulatory-requirements/regulatory-update-2016/bsb-regulatory-update-january-2016/bsb-handbook-explained-%E2%80%93-barristers-working-pro-bono>. Note that employed barristers in 'recognised bodies' are already able to volunteer through the Bar Pro Bono Unit, Bar Council, *Bar Council insurance call for employed barristers gets go-ahead*, Nov. 13, 2017 (Jul. 6, 2018, 2:30PM), <https://www.barcouncil.org.uk/media-centre/news-and-press-releases/2017/november/bar-council-insurance-call-for-employed-barristers-gets-go-ahead%E2%80%8E>.

¹⁸¹ Robert McPeake ed, PROFESSIONAL ETHICS, at 37 (16th ed. 2015).

¹⁸² Bar Council, *supra* note 182.

¹⁸³ Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers* in, CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 31 (Austin Sarat & Stuart Scheingold eds. 1998).