



EVERYTHING MATTERS

THE ENGLAND & WALES IN-HOUSE LEGAL COUNSEL PRO BONO GUIDE

All you need to know about establishing or joining an existing pro bono programme.

DLA Piper is a global law firm operating through various separate and distinct legal entities. For further information, please refer to www.dlapiper.com





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INTRODUCTION

At DLA Piper we have welcomed several of our in-house legal team clients to partner with us on pro bono projects. These pro bono partnerships have provided opportunities for in-house lawyers to work on a diverse range of pro bono initiatives. In the UK we have recently partnered with lawyers from Barclays and GE to deliver a legal teaching programme for law undergraduates in Tanzania. Globally we have worked with clients to staff pro bono clinics, provide legal advice to terminally ill patients and create the Middle East Investment Initiative, a non profit organisation, designed to facilitate economic development and job creation in the West Bank and Gaza.



At DLA Piper we support and enable all of our lawyers to be actively involved in our pro bono programme and we are working to promote and support a strong pro bono culture throughout the legal profession.

Last year, our lawyers undertook 191,000 hours of pro bono work, making DLA Piper the world's largest provider of pro bono legal services. This year we are looking to significantly increase the size of our pro bono practice and as board sponsor for pro bono at DLA Piper and board member of our non profit pro bono affiliate, New Perimeter, I am delighted to be supporting this initiative.

We know that for many in-house lawyers participating in pro bono has become complex, with legislative and insurance restrictions and with limited opportunities to participate as an individual or as a small legal team. We very much hope that this guide will provide you with the guidance you need, encourage and enable you to participate and inspire you to undertake a pro bono project or work with us in a pro bono partnership.

Janet Legrand

Board Pro Bono Sponsor
DLA Piper International LLP

WHAT IS PRO BONO?

The pro bono protocol developed by The Attorney General's Pro Bono Coordinating Committee and the Law Society defines pro bono as:

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

See Appendix 3 for a full version of the pro bono protocol

WHY SET UP A PRO BONO PROGRAMME?

As lawyers we have a privileged position in society. That privilege is the ability to provide legal advice and representation.

With that privilege comes important responsibilities to ensure that everyone is able to access legal advice and to contribute to the administration of justice.

There is also a moral imperative for a commitment to pro bono since, as lawyers, we have the capacity to assist people in a meaningful and life-changing way.

THE BUSINESS CASE FOR CORPORATE PRO BONO

In some cases, the establishment of pro bono projects and initiatives will involve both an investment of time and also a financial investment. Some businesses are more sophisticated than others in identifying the business case for investment in corporate responsibility (CR) initiatives.

While pro bono work should always be undertaken for the benefit of the client and/or the community, investment in pro bono may deliver business benefits to your organisation. The business case for pro bono includes:

- Improved legal staff recruitment and retention.
- Increased employee engagement.
- Broader professional experience.
- Improved reputation and profile.
- A tangible legal-team contribution to your organisation's broader CR strategy.
- The practical demonstration of your organisation's values.

AM I COVERED FOR PRO BONO WORK?

The provision of pro bono services by in-house lawyers as solicitors is governed currently by the Legal Services Act 2007 and the SRA (Solicitors Regulatory Authority) Practice Framework Rules 2011. The professional duties of each individual solicitor remain the same for pro bono work as carrying out commercial activities e.g. client care, confidentiality, conflict of interest etc. However when providing pro bono advice as an in-house lawyer it is important to be aware of issues that may arise in respect of:

- Professional indemnity insurance and providing legal advice to someone or some entity that is not their employer; and
- Carrying out a reserved activity

In general Rule 4 of the SRA Practice Framework Rules 2011 requires that as an in-house lawyer you must not act for clients other than your employer. However Rule 4.10 acts as an exemption to allow an in-house lawyer to conduct work on a pro bono basis for a client other than their employer provided:

1. the work is covered by an indemnity insurance equivalent to that required under the SRA Indemnity insurance rules and
2. no fees are charged or if a conditional fee arrangement is entered into then fees charged are only those you would receive under a costs order.

The provision of professional indemnity insurance may be an expense to the employer. Some solutions to this are for an in-house legal team to join a project of a law firm and obtain cover via that firm's insurance policy. The in-house

lawyer must ensure that their involvement in the scheme has been notified to the law firm's insurers and that cover is in place. For further information about partnering with DLA Piper on pro bono projects, please contact us.

If the in-house lawyer is not part of a pro bono partnership with a law firm they also have the option to join LawWorks, a charity which provides pro bono projects for lawyers. LawWorks provides professional indemnity insurance coverage to in-house legal teams, for pro bono activities undertaken via the LawWorks programmes. There is an annual membership fee to join LawWorks and more details can be found at www.lawworks.org.uk

An in-house lawyer is also restricted in their pro bono activities by Section 15 Legal Services Act 2007 and Rule 4.10 (C) SRA Practice Framework Rules 2011 which require that in providing pro bono legal advice an in-house lawyer must not undertake any reserved legal activities, namely:

- the exercise of rights of audience (i.e. appearing as an advocate before a court);
- the conduct of litigation (i.e. issuing proceedings before a court and commencing, prosecuting or defending those proceedings);
- reserved instrument activities (i.e. dealing with the transfer of land or property under specific legal provisions);
- probate activities (i.e. handling probate matters for clients);



- notarial activities (i.e. work governed by the Public Notaries Act 1801); and
- the administration of oaths (i.e. taking oaths, swearing affidavits etc.).

Most in-house lawyers participating in pro bono activities will not wish to undertake these reserved activities. However, it should be noted that there are certain exemptions which allow an in-house lawyer to give pro bono advice in relation to reserved activities provided the provision of the relevant services to the public or a section of the public is not part of your employer's business. To determine whether you can undertake reserved legal activities you will need to consider whether the activities to be undertaken can be regarded as part of the business of your employer, in which case you could not act. Relevant factors suggested by the SRA guidance to consider are:

- a. relevancy of such work to the employer's business;
- b. whether the work is required of the employee by the employer;
- c. how often such work is carried out;
- d. where such work is carried out;
- e. when such work is carried out;
- f. whether such work is explicitly carried out on the employer's behalf;
- g. who provides the necessary professional indemnity insurance;

- h. the extent to which the employer relies on or publicises such work;
- i. whether the employer provides management, training or supervision in relation to such work;
- j. whether the employer specifically rewards the employee in any way in relation to such work;
- k. how many employees carry out the work, and the overall proportion of their time spent on such work;
- l. the extent to which such work complements or enhances the employer's business;
- m. all the circumstances, and the context, will be critical to your decision about whether you may act, for example the work will not necessarily be part of employer's business merely because it is carried out in office hours, or at employer's premises.

We would advise that you seek specific advice from the SRA if you wish to participate in reserved activities as part of your pro bono programme.

For employed barristers operating in-house, the Bar Standards Board Code of Conduct also requires appropriate professional indemnity insurance (Rule 204 (c)), to cover the work carried out by the barrister on a pro bono basis.

The Code of Conduct also provides under rule 502 and 502 (c) that any employed barrister may supply legal services to members of the public free of charge, but this must be whilst acting in the course of his/her employment. Rule 806 also specifically allows barristers to supply legal

advice services at a Legal Advice Centre, but again such barrister will be treated as an employed barrister and therefore it must again be shown that the barrister was acting in the course of his/her employment.

For further guidance, pro bono opportunities for barristers and information please go to www.barprobono.org.uk. The Bar Pro Bono Unit is a registered charity, supported by the Bar Council, and allows barristers to act directly for pro bono clients as a special exemption.



HOW DO I ESTABLISH A PRO BONO PROGRAMME?

HOW WILL WE ACCESS PRO BONO CLIENTS?

As is apparent from the case studies below, many successful pro bono projects are partnerships between in-house lawyers and law firms or community based organisations working at the front line that have direct access to people in need of legal assistance.

Collaboration is a key ingredient to undertaking successful pro bono work.

WHAT WILL IT COST?

It is often the case that pro bono work requires a small financial investment in addition to an investment of time.

The types of expenses will include travel costs, disbursements on pro bono matters such as travel, copying costs, filing fees, etc. The costs will depend upon the nature of the project or the matters that you undertake.

Even though costs are likely to be minimal, it is important to understand the extent to which your organisation is able to provide funding to facilitate pro bono work. This may impact the types of projects or matters that you are able to take on.

SAMPLE PRO BONO POLICIES

We have prepared a sample pro bono policy which may be used by in-house legal teams when establishing pro bono programmes.

The policy may be used in its current form or amended to suit your individual needs. See Appendix 1 for the sample policy document.

Regulatory and Compliance Issues

When performing pro bono work in England & Wales, lawyers are required to comply with all regulations applicable to legal practice in their jurisdiction. The information following details some of the key compliance issues which must be considered prior to commencing work on a pro bono matter. The information contained below is not exhaustive, and practitioners engaging in pro bono work should contact one of our UK Pro Bono team for further information.

Costs agreements

Although at present, pro bono litigation advice and advocacy falls within the reserved activities restriction, in-house lawyers should note S.194 Legal Services Act 2007 which marked a major change for pro bono cases in relation to recovering costs. Prior to the legislation, a client represented on a pro bono basis could not be awarded costs on the basis of the indemnity principle and that no actual costs had been incurred by the client.

Since the introduction of the legislation in 2007, if a civil case is won with pro bono help, pro bono costs can be ordered by the court, or included in settlements. The costs cover any period when pro bono advice or representation was provided, and the amount is based on what a paying client would recover. All costs recovered are, by virtue of the legislation, paid to the Access to Justice Foundation.

The Access to Justice Foundation uses these recovered costs from pro bono cases to assist pro bono organisations.

The Foundation provides excellent guidance on pro bono costs orders and precedents at their website www.accesstojusticefoundation.org.uk

Corresponding with pro bono clients

Communications with pro bono clients should be tailored to suit the client. Some pro bono clients will have limited English language skills, and therefore plain English drafting, and face to face meetings to explain the content of written communications, may be important.

It is also important to consider the most appropriate letterhead to use when sending communications on a pro bono matter. When considering this question, it is often useful to begin by determining which entity is providing the legal services, and where the professional indemnity risk lies. If working in a legal advice clinic programme it would be usual for any correspondence with clients to be on letterhead of the legal advice clinic.

If you are partnering with a law firm, and the law firm is carrying the risk, then communications should be sent on the letterhead of the law firm, and approved by a partner of the firm.

The SRA regulates all pro bono work and the supervision rules would apply as they would for any commercial piece of advice. This should be taken into consideration when junior lawyers are producing correspondence for pro bono clients.

Some in-house legal teams have professional indemnity insurance in place which covers pro bono work performed by their legal team. In these circumstances it may be appropriate for correspondence to be delivered on the company letterhead.

Holding of client monies

If, during the course of your pro bono programme, a project requires you to hold client monies, you will need to comply with the SRA accounting rules and other financial regulations, which may cause a significant complexity for in-house legal teams. In these types of projects we would recommend that you consider this possibility very carefully before commencing the pro bono project. As an alternative, you could partner with a law firm, working with their lawyers directly and thus allowing the law firm to hold the client monies. A law centre partner could also possibly hold client monies if you are working on a case with them directly, or you could explore using an escrow agent to hold the monies.

Before establishing a pro bono project it is important to consider the following:

Is there institutional support for pro bono within the legal team, and within the organisation generally?

If not, it will be important to address the lack of support before establishing a pro bono project.

At a minimum you will require the support of the lawyers who will be involved in the project. From a client service delivery perspective, it is important that the lawyers participating in the delivery of pro bono services are doing so voluntarily.

What skills exist in the legal team, and can those skills be matched to an identified legal need in the community?

Case Study: A multi-national IT/software company based in the Silicon Valley employs a large team of immigration lawyers to move employees between the company's various





bases in the United States and India. The legal team has very deep expertise in immigration law and a passion for human rights and social justice. The legal team enters into a partnership with a peak refugee advocacy group which refers unrepresented asylum seekers to the legal team for advice and representation on a pro bono basis.

Case Study: A major chain of fast-food restaurants employs a legal team at its head office to deal mainly with property matters relating to its portfolio of commercial properties. A number of the legal team have previously worked in large commercial firms where they have participated in regular pro bono work through their firm's pro bono programme. The lawyers draft a pro bono policy for the corporate legal team which proposes that each lawyer will be permitted to spend up to 3% of their time on pro bono matters. The policy is approved by the General Counsel. The corporate legal team join LawWorks and indicate a willingness to accept the referral of property law matters. Over the first 12 months the legal team are offered 10 referrals from LawWorks. Due to capacity constraints the legal team accepts six of the referrals. The matters referred include reviewing leases for not-for-profit organisations, advising on maintenance and repair obligations and break clauses, and answering quick online questions relating to specific lease terms.

Is there a legal need that could be met by up-skilling the legal team in an area relevant to pro bono practice?

Case Study: The General Counsel at an investment bank is a strong advocate of Corporate Responsibility and wants the legal team to be a role model for the rest of the bank in making a meaningful and positive, skills-based contribution

to the community. He speaks to his legal staff and confirms their willingness to participate in pro bono work. He then contacts the Pro Bono Partner at a law firm that provides the bank with commercial advice and discusses pro bono partnering opportunities. After consulting with his legal team about the options suggested by the firm, the bank decides to partner with the law firm on a homeless persons' legal clinic, which operates at lunchtime on Fridays from a homeless shelter. As part of the project, the law firm delivers training to the bank's lawyers on various aspects of poverty law, including housing, welfare benefit payments, fines and small debt matters.

Case Study: A telecommunications company has a community programme which focuses on supporting animal welfare. The legal team is asked by the company's Corporate Responsibility Director to consider ways that it could contribute to the company's community programme. The lawyers believe that their contribution should be through pro bono, since there is a substantial unmet legal need in the community. The legal team meets with a leading animal welfare charity and indicates a willingness to accept referrals of pro bono matters. As a part of the project, the lawyers attend animal law conferences, join professional organisations, such as Lawyers for Animals, and are funded to participate in University animal law courses. The legal team develops substantial skills in this emerging area of the law and become recognised as experts in this field.

PARTNERING OPPORTUNITIES WITH DLA PIPER

At DLA Piper, we have a successful track record of partnering with the legal teams of our clients on community and pro bono projects.

By partnering with us on one of our already established pro bono projects, your legal team can immediately access clients with real, pressing legal problems.

We aim to give all our lawyers an opportunity to contribute to the community through pro bono work. We have a number of established pro bono projects including:

- Legal Advice Clinics.
- A specialist one-stop-shop council tax advice clinic.
- Legal research projects.
- International legal teaching projects.
- Legal advice talks to charities and non-profit-organisations.
- Asylum Seeker project.

If you would like to discuss pro bono partnering opportunities, please contact:

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or

Nicolas Patrick

International Head of Pro Bono

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Or contact any partner at DLA Piper.

Below is a sample of some of the many projects we have run in partnership with other organisations.

University Law School of Tanzania – DLA Piper has collaborated with clients GE and Barclays Bank to bring legal and commercial expertise to the University Law School of Tanzania. The programme is focused upon training the next generation of lawyers in Tanzania. The two-week programme of lectures and interactive workshops is delivered to the law graduates by DLA Piper and in-house legal teams from GE and Barclays Bank. The course provides a comprehensive training programme around areas of legal drafting which include: negotiation techniques, drafting dispute resolution clauses, drafting sales and purchase agreements, and general advice on the structure, clarity and the use of plain English as a tool of the good legal draftsman.

Moscow State University – In 2011, 30 Russian law students attended a teaching programme entitled “Professional Responsibility and Ethics in the Global Legal Market” at Moscow State University. The programme was designed and delivered by DLA Piper, in partnership with amongst others DLA Piper client Verizon, Microsoft, and non-profit-organisation PILnet. Professional responsibility and ethics has risen in Russia’s national business agenda over recent years, but the subject is not yet taught widely in Russia’s Universities. The four day course covered a broad range of issues such as regulation of the legal profession, conflicts of interest, knowing your client, anti-corruption and corporate responsibility. It is anticipated that similar courses will be presented in the future at the University, and that the learning materials will be adapted for delivery to a much broader range of professions across Russia’s Universities.





Aspen Institute – DLA Piper lawyers have worked with the Aspen Institute to create, manage and fund the Middle East Investment Initiative (MEII), which is a non-profit organisation designed to facilitate economic development and job creation in the West Bank and Gaza. MEII is now collaborating with the Overseas Private Invest Corporation (OPIC), the Palestinian Investment Fund, CHF International and local banks to create a \$160 million Loan Guarantee Facility to support small and medium-size enterprises in the Palestinian Territories. This public-private partnership, which has the support of the Israeli Government, will leverage an estimated \$210 million in loans to Palestinian businesses, enabling them to expand and hire additional employees.

Accenture – In Sydney, lawyers from Accenture participate with our employees in a student mentoring programme, LEAPS, which involves mentoring students. The DLA Piper Chicago office partners with Accenture lawyers to teach Constitutional Law to fifth graders through the Voices programme sponsored by the Constitutional Rights Foundation of Chicago. Lessons focus on the Bill of Rights and the court system. At the end of the programme, the students stage a mock criminal trial.

Pfizer – DLA Piper lawyers participate in a seminar series, “Strategic Legal Thinking for Not-for-Profit Executives”, addressing corporate governance issues. Pfizer organises these seminars for leaders of non-profits to address some of the legal issues they face.

Sears – Real estate lawyers in the DLA Piper Chicago office partnered with Sears lawyers to represent home buyers as part of the “Choose to Own Programme”. The programme enables qualified recipients of housing assistance payments to use them to purchase single-family homes.

Ramsay Health – Lawyers in our Sydney office work with the in-house legal team at Ramsay Health to provide pro bono legal services to terminally ill clients through the Cancer Patients Legal Service. Common legal issues include insurance, wills, power of attorney, enduring guardianship, employment, and superannuation.

PRO BONO CONTACTS

For more information contact

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Other important contacts:

[LawWorks](#)

[TrustLaw](#)

[I Pro Bono](#)

[PILnet](#)

[Access to Justice Foundation](#)

[Bar Pro Bono Unit](#)

[Free Representation Unit](#)

[Law Centres Federation](#)

Pro bono updates

Send an email to

legal.updates@dlapiper.com

to subscribe to our regular pro bono updates to help you stay informed on pro bono issues and on the pro bono work undertaken by in-house lawyers.

APPENDIX I

SAMPLE PRO BONO POLICY

Note: The following policy document has been produced as a guide for in-house lawyers wishing to develop a pro bono practice within a corporate legal team. The document is generic in its nature. We recommend that you modify this document to reflect the specific needs and intentions of your organisation.

I INTRODUCTION

1.1 [Company] has an institutional commitment to Corporate Responsibility (CR).

1.2 As part of this commitment, and recognising the substantial unmet legal needs in our community, the legal division will encourage and facilitate the participation of corporate lawyers in pro bono work.

1.3 This policy has been endorsed by the General Counsel and provides the framework under which pro bono legal work will be undertaken.

2 STATEMENT OF PRINCIPLES

2.1 [Company] regards pro bono as an important aspect of a lawyer's professional responsibility and professional development. Lawyers enjoy special privileges by which they participate in, and are a part of the legal system. They have and always should work to improve that system, and the community's access to it.

2.2 Undertaking pro bono work is also an ethical duty that all lawyers must accept. Many in our community are unable to afford legal services. By providing pro bono legal assistance, [Company] lawyers will assist in improving access to justice.

2.3 [Company] acknowledges that it owes a social responsibility to the community in which it operates. [Company] accepts that, as a business which benefits from our community, we must also contribute to our community.

Through the provision of pro bono services, [Company] lawyers will increase community awareness of legal and human rights.

2.4 [Company] will seek to provide pro bono services in a manner which emphasises education and empowerment and result in long-term change in our community.

2.5 The decision whether to participate in pro bono initiatives will be up to each individual.

3 DEFINITION

3.1 [Company] has adopted the Pro Bono Protocol definition of pro bono.

3.2 The Pro Bono Protocol defines pro bono as follows:

3.2.1 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 funding is not available.

3.2.2 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.

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

4 ASPIRATIONAL TARGET

4.1 We encourage [Company] lawyers to adopt a personal aspirational target of 50 hours of pro bono per year.

5 COORDINATION

5.1 The General Counsel will appoint a pro bono coordinator from within the legal team.

5.2 The pro bono coordinator will have the day-to-day responsibility for managing the pro bono projects undertaken by the legal team. Specific responsibilities include:

5.2.1 Ensuring that all members of the legal team who participate in pro bono activities are covered by professional indemnity insurance cover and comply with SRA regulations

5.2.2 Coordinating pro bono projects established by the legal team.

5.2.3 Acting as the first point of contact for *[identify referrers of work or specific charities for whom the legal team undertakes pro bono legal work, e.g. LawWorks, TrustLaw, the Red Cross, the pro bono coordinator at DLA Piper]*.

5.2.4 Arranging for the legal team to receive training in areas of law relevant to pro bono practice.

5.2.5 Promoting a pro bono culture within the legal team.

5.2.6 Working with the CR Director or equivalent to identify opportunities for the legal team to integrate pro bono assistance into the broader CR programme of the organisation.

5.2.7 Collating pro bono data for input to the company's annual CR report.

6 PRO BONO WORK COMPETENCY, SERVICE AND OBLIGATION

6.1 Pro bono work is to be carried out in the same way, according to the same procedures, with the same diligence and timeliness, subject to the same supervision and review, and with the same recognition for time spent, as all other legal work undertaken by the legal team.

7 INTERNAL PRO BONO WORK

Note: This section is only relevant for in-house teams proposing to undertake internal matter-based pro bono work that involves opening files for individuals or charities and special attention should be paid to SRA regulations.

Delete if not applicable.

7.1 Pro bono matters will come to the legal team by way of referrals. The sources of referrals include:

7.1.1 [*Select or insert relevant referrers*].

7.1.2 Charities with whom [*Company*] has an existing relationship.

7.1.3 Community legal centres.

7.2 Some matters will come from within the organisation or from other sources. These are to be assessed and approved in the same way and according to the same criteria. They should not receive preferential treatment.

ALLOCATION AND SUPERVISION

7.3 Matters are allocated to solicitors by the Pro Bono Coordinator in consultation with the solicitor's relevant supervisor, and on the basis of interest, availability and expertise.

7.4 All pro bono matters should be registered and their progress monitored by the Pro Bono Coordinator. Supervisory responsibility remains within [*each team/the General Counsel/the relevant supervising lawyer holding a current practising certificate*].

7.5 Participation in pro bono work is encouraged but is not mandatory. This is subject to the normal expectation that a lawyer, except in unusual circumstances, will undertake work that is assigned to him or her by a supervisor who considers that a matter is appropriate for them to handle.

FIRST INTERVIEWS AND TERMS OF ENGAGEMENT

7.6 Given the lack of sophistication of many potential clients and their inexperience with the law, special care may be needed in communicating expectations and the way a matter is likely to proceed. The Pro Bono Coordinator

should sit in on the first interview with pro bono clients in most cases and should ensure that the terms of engagement are clearly articulated and understood.

7.7 The Pro Bono Coordinator should provide assistance to the solicitor handling a pro bono matter to ensure that an appropriate retainer is in place in compliance with the SRA regulations.

7.8 Time should be recorded on all pro bono matters, especially where the matter involves a potential costs recovery.

DISBURSEMENTS

7.9 The legal team's budget will include an allocation for disbursements in pro bono matters, such as medical or other expert reports, court filing fees and the like. Internal costs such as photocopying, faxing etc will not be charged to the client.

Where a barrister is needed, the Pro Bono Coordinator will assist in finding appropriate pro bono assistance – the Bar Pro Bono Unit should be approached initially, as they are the key provider of pro bono services of barristers.

Local Pro Bono Coordinators should be aware that those on low income, or in receipt of certain benefits, can apply for an exemption from payment of court fees at the family and civil courts and probate registries under the Fee Remission Scheme – for further information see http://hmctscourtfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court_leaflets_id=172

RECOVERY OF COSTS

7.10 In matters where costs are likely to be recovered, a costs order should be applied for, or included in any settlement negotiations. Guidance on recovery of costs and precedent orders can be obtained at www.accesstojusticefoundation.org.uk

Any costs recovered by a pro bono party are mandatorily gifted to the Access to Justice Foundation.

CHARGING FOR PRO BONO WORK

7.11 The legal team will not charge individual pro bono clients.

ADVERSE COSTS ORDERS

7.12 Adverse costs orders are rarely anticipated by pro bono clients and must be properly explained, where applicable, at the outset of a matter.

8 GUIDELINES FOR EXTERNAL PRO BONO WORK

Note: The following section will be relevant for legal teams proposing to undertake external pro bono work, such as advice clinics, legal secondments, court rosters etc.

Delete if not applicable.

AGENCIES

8.1 Eligible agencies should be non-profit-organisations working for [*Insert criteria e.g. disadvantaged or marginalised people*].

ATTENDANCE AT LEGAL CLINICS

8.2 [*Company*] has established a free weekly legal clinic [*Insert details e.g. for the homeless at [location]*].

8.3 Lawyers who volunteer for the clinic must ensure their attendance on their rostered dates. It is the responsibility of rostered lawyers to find a replacement if they are unable to attend.

8.4 Lawyers are entitled to be reimbursed for their costs of travel between the office and the clinic.

VOLUNTEER LAWYERS

8.5 When and where lawyers volunteer their time is a matter for the individual. However it is in keeping with the spirit and culture of the organisation to encourage and support such initiatives. This support means being prepared to allow lawyers to leave work in sufficient time for them to perform their volunteer duties, to permit them to make phone calls and to perform other minor work on community agency matters in firm time.

APPENDIX 2

SAMPLE PRO BONO COSTS AGREEMENT

Confidential

Our ref: []

Your ref: []

[Date]

[Address details]

cc:

Dear [Name]

CLIENT AGREEMENT: [DESCRIBE MATTER]

Thank you for your instructions [state how/when instructions received]. We are pleased to be able to assist you in this matter.

At the outset, we need to enter into a Client Agreement with you setting out the terms on which we will assist you.

This letter, [if there are attachments insert, its attachments] and the enclosed Pro Bono Standard Conditions form our offer to enter into a Client Agreement with you. If there are any inconsistencies between the terms outlined in these documents, the terms stated in this letter will prevail.

Please read these documents carefully.

- If they are acceptable to you, please sign and return the enclosed copy of this letter.
- If they are not acceptable to you, please contact me immediately.

If you do not return a signed copy of this letter, but continue to provide us with information and instructions on your matter, we will assume that you have accepted our offer and the terms contained in these documents.

1 CLIENT AND ADVISOR

Our client in this matter will be [enter full legal name of specific client entity or, if client is an individual, insert words such as ‘the person to whom the letter is addressed’] (you). Your advisor will be [enter full legal name] (we or us).

2 SCOPE OF SERVICES

We will provide you with the following services in relation to your matter:

- [Clearly set out the scope of the work so there is no dispute regarding the extent of our pro bono assistance].

3 MATTERS OUTSIDE THE SCOPE OF SERVICES

We will not be providing advice on [list related issues/matters which we will not be advising on].

4 TIMETABLE

We confirm that [tasks, due dates or time for completion – set out what has been agreed as to timetable]. If we become aware that this timetable is likely to change we will notify you as soon as possible.

5 OUR TEAM

[Name], [title], is the legal practitioner who will primarily perform the work. [First name]’s direct line is [number]. Please contact [first name] if you would like to discuss anything in relation to the matter. [Name], [title] will also supervise [first name] and assist as necessary.

Where appropriate, we will adopt a team approach to ensure that your work is performed as efficiently as possible. A senior lawyer will always be responsible for your work. However, the senior lawyer may delegate tasks to other members of the team with the appropriate skill and experience.

6 WHAT YOU HAVE TO PAY

We have agreed to act for you in this matter on a pro bono basis. This means that we will not charge you for our professional fees or for our [if not charging third party disbursements insert standard charges or disbursements if charging third party disbursements insert standard charges].

[Delete the following paragraphs if not charging for third party disbursements]

We will charge you for disbursements. Disbursements are expenses we incur on your behalf for services supplied or payments charged by third parties. We will incur such disbursements as agent for you and will only recover from you the amount paid by us to the third party (inclusive of any VAT the third party has included in that amount).

Set out below is a list of the likely disbursements you will incur in this matter and an estimate of your total disbursements. However, this is only an estimate and is not binding on us. I will let you know if the estimate needs revising.

Disbursement	Amount
[<i>type of disbursement</i>]	£[]
[<i>type of disbursement</i>]	£[]
[<i>type of disbursement</i>]	£[]
Estimated total disbursements	£[]

We will obtain your approval and consent before we incur any disbursements which are not listed in the table above.

We will normally send you an account for disbursements monthly, but this may vary depending on the amount of disbursements incurred. In certain circumstances we may request that you provide us with the funds for such disbursements up front. We will place this money in our trust account in your name. Once we have issued you with an account for disbursements we are entitled to withdraw that money to pay for them.

Where possible, we will assist you to obtain funding for, or exemption from, third party disbursements. If we do receive any funding or are able to claim exemption from a disbursement incurred in your matter, and you have already paid us for the relevant disbursement, we will provide you with a refund up to the amount we have received or the amount of the exemption.

7 FEEDBACK

[*Set out any review processes that are proposed or agreed*]

We pride ourselves on the provision of a high quality service to our clients at all times. If you would like to discuss our performance, please contact [*name*]. If that does not resolve the situation, you can contact me [or our Team Leader, [*name*]].

Once again thank you for instructing us. We look forward to working with you. If you have any queries about any aspect of this letter [*if relevant insert, its attachments*] and the Pro Bono Standard Conditions please do not hesitate to contact us. Otherwise, please confirm your acceptance by signing the enclosed copy letter and returning it to us as soon as possible.

[*Signoff*]

I agree to be bound by this letter [*if relevant insert, its attachments*] and the Pro Bono Standard Conditions.

After I have been issued with an account for disbursements in relation to this matter, I authorise and direct [*insert full legal name*] to recover such amounts out of any funds which they hold in their client account on my behalf from time to time.

I consent to an external quality system accreditation authority accessing files in relation to my matter provided they do so on a confidential basis.

Signed:

[*Client's name*]

Dated: ___/___/___

Attachments Pro Bono Standard Conditions
 [*List other attachments*]
 Copy of Client Agreement letter

PRO BONO STANDARD CONDITIONS

YOUR INSTRUCTIONS TO US

Your instructions to us are summarised in the client agreement letter.

To allow us to provide you with the best legal services possible, you must give us all the information you have that is relevant to your matter. This information should be in writing if possible. Please don't assume we already have all the relevant information.

If you remember, or become aware of, any other information relevant to your matter, you must let us know immediately.

We may need to ask you for more instructions. Therefore, if you go away from your residence or business you must tell us how to contact you while you are away.

OUR WORK FOR YOU

The client agreement letter sets out the particular work we will do for you. We will try to keep you updated on the progress of the work we do.

We will carry out our work with professional skill and diligence.

Our only duty of care is to you. If any other person wants to rely on our work, they do so at their own risk, unless we agree in writing that they may also rely on it.

If any advice we give you is based on assumptions or qualifications, we will tell you what they are. However, we will not be responsible if new information comes to hand later showing that a stated assumption was incorrect or a stated qualification was inapplicable.

- You fail to pay an amount in line with the client agreement.
- You lose legal capacity.
- You object to an alteration to the client agreement and we reject that objection.

If possible, we will give you reasonable notice that we intend to end the client agreement with you.

If either of us ends the client agreement, you must pay any outstanding disbursements that are incurred up to the time the client agreement is ended.

ENDING THE CLIENT AGREEMENT

You may end the client agreement and withdraw your instructions at any time and for any reason.

We may end the client agreement and stop acting for you if we discover that we have a conflict, or if we have another good reason, or if you do one or more of the following:

- You do not follow our reasonable advice.
- You breach our agreement.
- You require us to act unlawfully or unethically.
- You fail to give us instructions.
- In our view, you lose confidence in us.
- You fail to pay an amount in line with the client agreement.
- You lose legal capacity.

- You object to an alteration to the client agreement and we reject that objection.

If possible, we will give you reasonable notice that we intend to end the client agreement with you.

If either of us ends the client agreement, you must pay any outstanding disbursements that are incurred up to the time the client agreement is ended.

PRIVACY

You consent to us collecting, using and disclosing your personal information to provide legal services to you. We may need to disclose this personal information to other individuals or organisations including other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in your matter. If you do not provide the personal information we need from you, we may not be able to provide these legal services to you.

Where you provide us with personal information you have collected from other individuals, you confirm that:

- The information has been collected in line with the applicable privacy laws.
- We are authorised to receive that information from you and use it to provide legal services to you.
- Unless exempted under the applicable privacy laws from doing so, you have taken reasonable steps to ensure that the individuals are aware, or would have expected, that their personal information could be provided by you to your legal advisers.

When acting for you, we may disclose personal information about other individuals to you. You agree to use, disclose, handle, store and transfer that information only in accordance with the applicable privacy laws.

Visit [www.\[insert\].com](http://www.[insert].com) to obtain a copy of our Privacy Policy. If you need a copy sent to you, please contact us.

CONFIDENTIALITY AND PUBLICITY

We will keep information about your matter confidential unless one or more of the following apply:

- You agree to us disclosing it.
- We are legally compelled to disclose it.
- We are required to disclose it to auditors or our professional advisors.

If you are an individual, you consent to us publishing the fact that we have acted in your matter, without disclosing your identity. For example, we may disclose in a tender document, brochure or other publication that we have acted on a pro bono basis for an individual in relation to a victims' compensation claim arising from an armed robbery.

LIMITATION OF LIABILITY

GENERAL

Where we are permitted by law, our liability for any work performed for you, whether it arises in tort (including negligence), contract or otherwise, is limited to a maximum of *[insert amount]* for the work.

We will not be liable for any incidental, special, punitive, or consequential damages of any kind relating to any work performed for you. In any event, we will not be liable for any loss to the extent that it is caused or contributed to by your conduct, or the conduct of your officers, employees or agents.

ELECTRONIC COMMUNICATION

We have various electronic means of communicating. These may involve some special risks – for example, the risks of interception, transmission of computer viruses and unauthorised amendment.

You accept those risks and you release us from any liability, loss (including consequential and economic loss), damage or expense caused by those risks.

ARCHIVING AND DESTROYING FILES

When work on your matter ends, we usually provide you with any original signed documents we have relating to your matter, unless you contact us to make other arrangements.

For other documents, if the law permits us to do so, we may make an electronic file of the documents relating to your matter and destroy the hardcopies. We will archive the electronic or hardcopy file for seven years after the date of the last recorded correspondence. We may then destroy the file, unless you have given us specific instructions to the contrary.

COPYRIGHT

We retain and will own copyright in all documents prepared by us while working on your matter. If literary or other works are created by us for or under your direction or control all copyright will vest in us irrespective of any provisions of the Copyright, Designs and Patents Act 1988 to the contrary.

GOVERNING LAW AND JURISDICTION

All aspects of our work and the client agreement with you are governed by the laws of the office shown on the letterhead of the client agreement letter. You submit to the non-exclusive jurisdiction of the courts of that place.

APPENDIX 3

PRO BONO PROTOCOL

Joint Protocol for Pro Bono Legal Work

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 funding is 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?

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

2.1 The availability of appropriate publicly funded legal advice or representation should always be considered before a lawyer undertakes Pro Bono Legal Work.

2.2 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.

2.3 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.

2.4 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.

2.5 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.

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

2.7 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.

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

2.9 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 Institute of Legal Executives.

2.10 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 Fully Qualified, or Otherwise 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.

www.dlapiper.com

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For further information, please refer to www.dlapiper.com

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