

# Legal Education & Practice

## Pro bono at the Bar

by Vanessa Sims



Bar Pro Bono Unit. Left to right: Peter Goldsmith QC, Chairman; Vanessa Sims, Co-ordinator; Robin Allen QC, Vice Chairman

Representatives of the Bar's various *pro bono* schemes met together for the first time at the Bar Council in early December 1997 supported by Robert Owen QC, 1997 Bar Council Chairman. Delegates came from eight *pro bono* organisations in England and Wales, representing almost 1,700 barristers and trainee barristers involved in formal schemes set up to advise and represent *pro bono* – free of charge.

Delegates shared information and agreed to develop co-ordination and cross-referral and, in addition, agreed to work together on promoting the value of *pro bono* work at the Bar and on producing a directory of services. We were pleased to welcome two further supporters, the Solicitor General, Lord Falconer QC, and Dan Brennan QC, 1998 Bar Council Vice-Chair, to a reception which followed the meeting.

### BAR PRO BONO UNIT

The Bar *Pro Bono* Unit is a relatively recent addition to the long list of schemes that barristers have volunteered their services for. The Unit was the initiative of Peter Goldsmith QC, 1995 Bar Council Chairman; it was set up to help those who needed legal assistance but were financially ineligible for legal aid and unable to pay lawyers' fees.

The Unit is not an alternative to a properly funded legal aid system. Recognising that gaps in provision did – and probably always will – occur, leaving deserving cases without assistance, was the motivation for the Unit.

In 1996, the Unit was established as an independent charity operating under a management committee of barristers and a senior clerk, chaired by Peter Goldsmith QC. With limited financial resources, the office is run with one part-time co-ordinator and two volunteers, Karl Davies and Veronica Carter.

### THE PANEL OF BARRISTERS

The Unit's first task was to establish a referral mechanism whereby clients in need of legal expertise would be matched to the right barrister – in terms of legal expertise, seniority and location. This is an important aspect of our work. The initial review of applications for assistance includes an assessment of the expertise and seniority of barrister needed; if that person is not available then the case will not be taken on.

Early 1996 saw the first appeal for barristers to 'sign up' to work *pro bono* at least three days each year for the Unit. This immediately produced over 300 willing participants, including many senior practitioners specialising in areas

not traditionally associated with *pro bono* work. That figure has now risen to 800 – approaching 10% of the Bar – including 130 QCs. All are willing to advise and/or represent in any court or tribunal in England and Wales. The Unit aims to provide a high quality service by asking counsel undertaking work to give each case the same attention as would be given a fee-paying client.

Almost 600 (75%) of the panel members are based in London, with the remainder spread throughout England and Wales. Over 50% of clients are based outside the South-East so constant efforts are made to increase the national list.

Over 50 legal specialisms are covered by the panel, from agriculture to inquests to planning to transport. The following gives an indication of the numbers available in some of the major areas:

Commercial	190 (including 46 QCs)
Criminal	210 (including 38 QCs)
Employment	150 (including 17 QCs)
Family	170 (including 11 QCs)
Housing	130 (including 7 QCs)
Professional negligence	240 (including 46 QCs)
Personal injury	205 (including 37 QCs)

### NEW AWARDS

The wish to recognise outstanding commitment to *pro bono* work resulted earlier this year in the presentation of the first Bar *Pro Bono* Award by Lord Mackay, the Lord Chancellor. Solicitors, clients, charities, pressure groups and colleagues from all over the country nominated those ranging from pupils to leading counsel.

### REFERRING CASES

Applications must be made on the Unit's form, and a decision on whether the Unit can help is taken by a barrister sitting on the management committee. Certain factors are always considered, such as:

- the case must have legal merit and deserve *pro bono* assistance;
- applicants must be financially ineligible for legal aid and unable to pay

(including by union or insurance) for the assistance they require;

- the case must be one requiring the skills of an experienced barrister – counsel cannot do the work of a solicitor;
- preparation, advice and representation should be capable of completion within three working days. In exceptional cases assistance can be given beyond that time limit; and
- there should be no other available source of assistance.

### WHO CAN REFER CASES?

Another important factor is who is making the application. A solicitor or other adviser, who is willing to continue working on a case on a *pro bono* basis, is more likely to have a request accepted for assistance; assisting with the application, formulating the request for help and concentrating on relevant points helps us to help the client. A quarter of applications come from solicitors, with 30% of the cases taken on coming from this source. This compares with 25% of all cases being undertaken for Citizens Advice Bureaux, compared with 20% of all applications; and 30% of assistance being given direct to lay clients, despite their representing half of all requests.

Citizens Advice Bureaux are able to refer directly tribunal cases and we are able to undertake advisory work for lay clients. However an assessment of whether a solicitor is needed is always undertaken on a case-by-case basis. If a solicitor is not needed and a lay client needs representation at the Court of Appeal, the Unit can assist, although the permission of the Bar Council will be needed on each occasion. If a solicitor is required and none is available the Unit would not be able to assist. In exceptional cases, solicitors have been found to help; referral links with firms do not exist but are needed.

### WORK UNDERTAKEN

Seven hundred applications for help have been received since the Unit opened, with around 300 cases receiving assistance from junior counsel to QCs. In around half of assisted cases – defamation, inquests and tribunals – legal aid is never available and those of modest means struggle to bring or defend actions. As anticipated, many clients are just outside the legal aid financial limit and are unable to pay the required fees.

The range of work undertaken is very broad. Common areas include construction and banking disputes, actions against the police, criminal appeals, employment actions, family cases, housing matters, planning disputes and complaints of professional negligence.

### RELATING TO OTHER BAR ORGANISATIONS

As the recent 25th anniversary of the London-based *Free Representation Unit* (FRU) demonstrates, the Bar's commitment to *pro bono* work is long-standing. Whilst FRU's work is perhaps best known, less celebrated but equally successful schemes run on the Northern Circuit, the Western Circuit and the Wales & Chester Circuit. Specialising in tribunal representation, these schemes handle thousands of cases from Citizens Advice Bureaux and solicitors annually.

At employment appeal tribunal level, there is an advisory service at the preliminary hearing stage for those without representation, run by the Employment Law Bar Association. The Planning Bar Association's Free Advocacy Scheme and the Environmental Legal and Mediation Service (ELMS) assist with representation at public inquiries and advice on environmental law.

The Unit was established to complement – not to duplicate – those schemes. Applicants seeking help with cases within the sphere of other schemes will be referred on to them.

However, a number of changes have occurred, for example:

- the scope of work is broader in terms of the legal areas undertaken and the courts and tribunals involved;
- the panel is made up of more senior barristers; and
- the geographical spread is wider.

### RECOGNISING OTHER PRO BONO WORK

Whilst press coverage concentrates on lawyers' fees, little attention is paid to the vast amount of *pro bono* work undertaken, much of it on an ad hoc basis. Privy Council death row appeals from the Caribbean have been undertaken by solicitors and barristers in this country for many years. Individual sets of chambers operate their own schemes, such as the public law team at 1 Crown Office Row in Temple and those operated by Doughty Street and 4–5 Gray's Inn

Square. Undoubtedly, there are many more working without public recognition.

The wish to recognise outstanding commitment to *pro bono* work resulted earlier this year in the presentation of the first Bar *Pro Bono* Award by Lord Mackay, the Lord Chancellor. Solicitors, clients, charities, pressure groups and colleagues from all over the country nominated those ranging from pupils to leading counsel. The judges of the award admitted that selecting one winner was no easy task and were astonished by the range of work undertaken. The 1997 winner was Judith Farbey, an immigration specialist from 3 Paper Buildings. Nominations for the 1998 Award will be invited shortly.

### A POPULAR SCHEME

Early 1996 saw the first appeal for barristers to 'sign up' to work *pro bono* at least three days each year for the Unit. This immediately produced over 300 willing participants, including many senior practitioners specialising in areas not traditionally associated with *pro bono* work.

### THE FUTURE

The recent establishment of the Solicitors *Pro Bono* Group is a welcome step and we look forward to working closely with this group and to establishing referral links with solicitors.

Debate on the future funding of civil cases following the Lord Chancellor's speech in October is best left to others. The question for *pro bono* schemes is whether the reforms will achieve their aim of improving access to justice – and make us redundant. Perhaps not. We anticipate a busy 1998 and a continuing demand for help from those for whom the legal system is far from accessible. 

Vanessa Sims

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