

# Submission to the Independent Review of Legal Service Regulation

## Introduction

LawWorks welcomes the Independent Review of Legal Service Regulation (IRLSR); with the current legislation over 10 years old and, following the Competition and Markets Authority's (CMA) market study of the legal sector in 2016, this is a valuable and timely initiative. It is especially welcome that the review addresses the policy framework of the Legal Services Act 2007 (LSA) within a wider access to justice context, and looks at challenges ahead such as the use of technology (Legaltech).

Our submission specifically addresses the role that pro bono can play in this landscape, and the regulatory issues encountered by legal practice in a non-profit and free legal advice context. We highlight how rules governing the solicitors' profession can be a barrier, or a perceived barrier, to pro bono engagement, and we flag the important role that both the regulators and professional bodies could have in actively encouraging a strong pro bono culture and ethos in the legal profession.

## About LawWorks

LawWorks (the Solicitors Pro Bono Group) promotes, supports and facilitates pro bono legal services that extend access to the law for individuals and communities in need and the organisations that support them. We champion pro bono because of the positive contribution and difference it makes for individuals, communities and society. We work (in England and Wales) with the solicitors' profession and with our members, the Law Society, law schools and law students, law centres, advice agencies and others to develop and support pro bono legal services, and to promote access to justice for all.

Our key programmes include:-

- **Clinics** - we support a network of 260 independent pro bono legal advice clinics across England and Wales, providing training, resources and guidance, and professional indemnity insurance. Around 40% of clinics are supported by law schools. Our most recent report on the LawWorks network demonstrated increasing demand with 60,000 inquiries of which 40,000 resulted in advice.<sup>i</sup>
- **Not-for Profits-programme** - we broker pro bono advice for smaller charities and social enterprises on a broad range of legal matters;
- **Bespoke casework and representation** ('Secondary Specialisation') - our in-house solicitors triage and supervise cases, including social security tribunal appeals, unpaid wages cases and support for parents and carers of children with life-limiting conditions;
- **Online platform** ('Free Legal Answers') - currently at pre-pilot stage, a new website for the public to seek initial advice directly from pro bono lawyers.

In addition, LawWorks promotes, supports and facilitates pro bono by providing training, knowledge sharing events, our pro bono awards, and by engaging with our constructive policy voice, working with the regulators professional bodies and stakeholders, to encourage a favourable environment for pro bono within a strong access to justice infrastructure.

LawWorks has been able to facilitate pro bono by, for example: working with the Solicitors Regulations Authority (SRA) on the application of practice rules; producing authoritative guidance and clarification (e.g., for in-house pro bono); securing specific SRA waivers; and providing professional indemnity insurance.

## General view on regulation and issues raised by the review

The review's scope and terms of reference focus on the overall governing structure and framework of legal services regulation and the principles. It notes the gradual shift away from a traditional title/status based regulation toward regulatory approaches based around entities, activities or business and consumer risks, and with a bigger role for the consumer voice and interest. As different types of legal services have proliferated, the framework has moved away from a self-regulation model, with professional bodies as powerful regulatory agents, to statutory oversight and regulators; however the LSA structure is complex. As the review looks again at first principles, we therefore start with the following general observations.

- All citizens interact with the law in some way and therefore have some need for legal services, even if that is just legal information (i.e., linked to public legal education), therefore we are all effectively legal services consumers but there is significant unmet need and a huge deficit of legal capability;<sup>ii</sup>
- Both as a public good and as an essential function of the rule of law, the legal professions, the services that they provide, and our legal and judicial system must be able to operate at arms-length from politics. But equally there must be a robust system of consumer protection and redress, and appropriate interventions to address market failures;
- Legal services have both a social and economic value; non-profit practice, legal aid, law firms' corporate social responsibility programmes, and pro bono activity all represent an exceptionally important contribution to society, helping vulnerable people, charities and communities, both in this jurisdiction and abroad, whose legal needs would otherwise be left unmet;
- A 'regulatory framework' should be understood to incorporate both 'hard' regulation, i.e., legal and practice regulations and entry/ongoing accreditation requirements set externally by regulators, and also 'soft' regulation, i.e., voluntary standards and codes, sometimes co-produced with stakeholders, which help to realise the overall ethos and ethics of the legal professions;
- Under the current framework, the distinction and boundaries between 'reserved' and 'unreserved' activity is not altogether conceptually clear; this may become fuzzier still when operating in a legal system in which digital processes, auto-document generation, online forms and 'unbundled' products are becoming the norm. We note the review calls the legal activities reservation mechanism an "historical anachronism" and not "fit for purpose".<sup>iii</sup>

We broadly agree with the review's approach that the overriding goal of legal services regulation should be driven by the public interest underpinned by a set of values.<sup>iv</sup> In this context, we believe that the objectives of the regulatory framework should acknowledge and support a role for pro bono; this would also help address some of the specific regulatory challenges for pro bono that we identify in this submission.

In making this assertion we do not advocate for any lesser regulatory standards for pro bono, and nor do we advocate that pro bono should be a mandatory requirement. By definition pro bono is voluntary activity, as the 'The Joint Pro Bono Protocol for Legal Work' makes clear legal work is only pro bono if provided voluntarily and free of charge (paragraph 1.2) and must be undertaken to a high standard, equivalent to that of paid work (paragraphs 2.1 – 2.8).<sup>v</sup>

We would also emphasise that whilst LawWorks is passionate about pro bono and its contribution to enabling access to justice, we are clear that it is not, and should not be seen as, an alternative to legal aid, nor to the funding of advice agencies and law centres. We have called for similar clarity from policymakers, and as our submission to the Government's recent review of legal aid makes clear: pro bono does not operate in a vacuum and, to flourish, needs an infrastructure provided through a strong network of community legal advice agencies. So the closure or retrenchment of law centres and community advice centres not only reduces the legal services delivered by those organisations, but also the contribution and impact of pro bono.<sup>vi</sup>

The regulatory objectives around access to justice are extremely important. Regulatory issues and barriers concerning pro bono have sometimes arisen on the basis of what we believe have been unintended consequences. We hope that this independent review will take this into account in its consideration of the rationale, scope and structure of regulation. As part of its work, and building on the insights from a LawWorks members' forum with Professor Mayson held in April 2019, and a follow-up meeting with pro bono coordinators in June 2019, the review should:

- Consider the implications and impacts of the distinction between 'reserved' and 'non-reserved' work for pro bono activity. We cover some of these issues in our submission, but a brief scoping exercise as part of the review would be useful.
- Review existing research and feedback on the effect of current regulation pro bono provision through law centres and other agencies/clinics including burdens, inhibitors; codes of conduct; professional indemnity insurance, and the Legal Ombudsman's jurisdiction.
- Look at the proportion and nature of law centre and pro bono work, including the unmet demands in the sector, that may involve one or more reserved legal activity, or a specifically regulated activity (eg immigration, debt, etc where there are multiple regulators); the last Legal Services Board "special bodies" study was in 2011 and the landscape has since changed.<sup>vii</sup>
- Address issues concerning the supervision of pro bono work, e.g. leading a dedicated team or volunteers or students; training and the implications of the new Solicitors Qualifying Examination (SQE) reforms, also looking at supervision and quality control of work pro bono work that may fall outside the 'normal' range of an organisation's work. There are also challenges of complexity of law in pro bono practice (e.g. social welfare law, immigration) and/or client vulnerability;
- Assess the position of in-house lawyers providing pro bono advice and services;
- Consider the implications for pro bono of any shift from title-based to activity-based regulation, and adopt a risk-based approach mix of before, during and after-the-event requirements

We would invite the review to consider how regulators and professional bodies could collaborate on more bespoke, facilitative and proportionate arrangements to adapt

regulatory requirements to specific pro bono contexts. Such arrangements might, for example, include group licensing, agreed protocols and user-friendly templates, toolkits and guidance for pro bono providers. It should also be acknowledged that pro bono providers are already regulated to a high standard under existing regulatory frameworks.

## Questions asked by the review

The review has published a number of working papers and asked some “fundamental questions” of stakeholders and consultees. These cover:

- **Rationale:** *Why* should we regulate legal services?;
- **Scope:** *What* are the legal services that should be regulated? (i.e., from advice to litigation and other legal processes or transactions);
- **Focus:** *Who* should be regulated for the provision of legal services? (i.e., entities or individuals);
- **Structure:** *How* should we regulate legal services?

We do not believe that there are easy answers or symmetrical solutions to these questions; a number of different legitimate interests (e.g., markets, consumers, professions, governments, judiciary etc.) are impacted by questions of regulation. We agree with the review’s approach to going beyond consumer protection arguments and looking at wider legal needs, not all of which can be met through conventional legal services models.

A focus on innovation is important, and pro bono can play a role helping to innovate and develop new models and approaches. In our response to the Solicitor Regulation Authority’s (SRA’s) last strategy consultation we argued that encouraging pro bono could help the SRA meet its strategic objective of “providing solicitors and firms the flexibility to innovate and better meet the needs of members of the public.”<sup>viii</sup> However, the best regulatory approach to encourage innovation may be ‘evolutionary’ rather than one that is disruptive, or could potentially throw up adverse consequences for access to justice. The 2004 Clementi review (which led to the Legal Services Act) did not recommend transition to a wholly activities based system under the jurisdiction of a single regulator (equivalent to today’s Financial Conduct Authority) because of the risk of unintended consequences.<sup>ix</sup>

We hope that, by being an exemplar of good practice, pro bono considerations can inform the review’s conclusions on the future shape of regulation. Below, we highlight where regulations and regulatory approaches can inhibit rather than enable pro bono and the provision of free legal advice and, in doing so, we reflect on the questions asked by the review. Given the overarching policy objectives in the LSA, we believe that regulatory barriers to pro bono most often arise as an ‘unintended consequence’ or a result of confusion, lack of clarity or narrowness of interpretation.

## Addressing barriers to pro bono

In exploring where rules governing the solicitors’ profession can be a barrier (or a perceived barrier) to pro bono engagement, we highlight the following areas:

### ***Solicitors as volunteers***

Firstly, it needs to be put beyond doubt that solicitors can practice as volunteers and not just as employees, and the SRA’s new Handbook will go some way to achieving this.

However there has been a problem with the way that the SRA has traditionally drafted its practice framework rules (PFR), and the 'gateway' to legal practice. The current rules (PFR Rule 1) state that a solicitor can only practice as: a) as a registered sole practitioner; b) as an employee of an authorised firm; c) as an employee of a (non SRA or authorised) business or organisation.<sup>x</sup>

This can cause confusion and uncertainty both in respect of employer obligations and the permissibility of volunteering outside employment, where pro bono is provided for, or in association with, a not for profit organisation (e.g. a firm providing pro bono with a law centre or Citizens Advice service). A strict application of the rules appears to require that a solicitor in a firm or in-house team has to be employed by the organisation receiving or hosting pro bono services (e.g., by a law centre running a pro bono clinic).

LawWorks was able to work with the SRA to address this issue through a position statement issued by the SRA, stating that solicitors can provide pro bono without becoming an employee of a not-for-profit organisation. In addition the statement says: "We want to encourage those willing and able to carry out pro bono work to do so".<sup>xi</sup> I;

#### ***Extract from SRA Statement on "Pro bono work and enforcement - our approach"***

This statement is to give comfort to you if you are employed as a solicitor or an REL and want to conduct voluntary pro bono work.....We want to encourage those willing and able to carry out pro bono work to do so.

#### **What you can do**

If you are an individual solicitor with a current practising certificate or an REL and are either employed by an authorised body or are conducting in-house practice (as defined in the SRA Glossary 2011), we will not regard you as being in breach of the PFRs if you conduct work, whether or not it includes carrying on a reserved legal activity for persons other than your employer - including for members of the public provided that:

- you do the work on a pro-bono basis and neither you nor your employer receive any remuneration in any form
- such work is delivered or conducted through an NFPB or a CIC that falls within section 23(2) of the Legal Services Act 2007 (LSA) and which is independent of your employer
- the recipient of the advice understands that the advice is provided by the NFPB or CIC and that you are conducting the work on behalf of that body;
- the work is covered by appropriate indemnity insurance
- the work you conduct is the responsibility of, and you are supervised by, the NFPB or CIC in the conduct of that work

We welcome that the SRA in its new Handbook reforms removes the practice gateway rules of PFR1, and adopts a more permissive approach, which is specifically designed to free-up solicitors to practice and provide legal services both within and outside of regulated entities. The Handbook also introduces a new 'freelancer' (self-employed) status (as distinct from being a registered sole practice/practitioner). The SRA intends that this status could facilitate undertaking pro bono work in a range of settings, and will only require light-touch notification requirements to the SRA. There are circumstances though where it could mean registering twice with the SRA; see Appendix (Scenario 1).

#### ***In-house pro bono***

In-house solicitors (those employed by a non SRA regulated business or organisation) are a significant and growing proportion of the profession. However, particular

regulations for in-house solicitors have caused confusion and an unduly 'risk averse' approach to engaging in pro bono.

Section 15 of the Act restricts the delivery of the six categories of 'reserved' legal activities by in-house counsel to anyone other than their employer, where such activities are carried out as part of their employer's business. Difficulties arise in the interpretation of whether the pro bono service would count as 'part of the employer's business'.

The SRA's practice rules (PFR Rule 4.10) re-enforce the statutory position. LawWorks' view is that the SRA's guidance on section 15 is unduly broad and unhelpful (see page 8 below). However, despite this, we encourage in-house solicitors to focus on how much they can do by way of 'non-reserved' legal activity. We have published authoritative guidance for in-house solicitors on the scope of non-reserved activity - including, for example, clarity on what does or does not count as 'conduct of litigation'.<sup>xii</sup> We are also further exploring how in-house teams can collaborate with law firms and facilitate pro bono.

For property-related matters (i.e. dealing with 'reserved instrument activities') the reservation appears to be quite wide, capturing preparation of a full range of written documents which create, modify, transfer or extinguish property interests, e.g., leases. However, LawWorks (following Counsel's Advice) has written to the SRA regarding a potential exemption for pro bono (para 3, schedule 3 of the Legal Services Act). An exemption would, for example, enable in-house solicitors to provide pro bono advice for charities on property matters.

### ***Professional indemnity insurance***

Obtaining professional indemnity insurance is a necessary requirement for all forms of pro bono practice. Securing appropriate insurance can, however, be a barrier to providing pro bono, particularly for in-house legal teams and for some pro bono clinics.

Under SRA rules, the insurance must meet regulatory minimums - e.g., currently the minimum insurance cover for any one claim must be £2 million. Under the new SRA Handbook, the requirements will be modified for solicitors practising in a 'non-commercial body': cover must be 'adequate and appropriate'; this is a welcome policy change from the requirement for non-commercial bodies to hold insurance that is "reasonably equivalent" to the commercial minimum of £2 million. However, the meaning of 'adequate and appropriate' is as yet somewhat unclear.

Where professional indemnity insurance is not otherwise available, LawWorks can insure (for free) pro bono clinics registered on the LawWorks clinics network. Since June 2019 LawWorks is also able to provide insurance for pro bono projects and activity (undertaken by LawWorks members) which are registered with and approved by LawWorks (a similar scheme has been operated by the Australian Pro Bono Centre).

### ***Wider regulatory challenges for the non-profit sector***

There are wider issues the non-profit sector has to navigate, alongside challenges of financial sustainability, including how these fit in the regulatory landscape.

### ***The role of law schools and student pro bono***

The clinical legal education (CLE) movement plays a significant role in developing legal clinics and public legal education initiatives.<sup>xiii</sup> As noted earlier, around 40% of clinics on the LawWorks network are based with or operated by law schools, usually with

significant student involvement. However, law school clinics do not easily fit into existing regulatory categories. As an article from a leading CLE expert has noted, academic practitioners running clinics find they can face something of a 'black hole' in dealing with regulatory systems and some aspects of the current regulatory framework are unclear for this sector.<sup>xiv</sup> Some better-resourced law schools have taken the step of becoming alternative business structures (ABS),<sup>xv</sup> but for many law schools which are dependent on wider university structures and support (e.g., buy-in from a Dean or Vice-Chancellor), they may struggle to navigate through some of the regulatory compliance issues. We touch on some of these issues elsewhere in this submission, but highlighting two examples:

- Whilst most Universities have charitable status and can therefore be considered as special bodies, there are a few that are private institutions so special bodies transitional protections do not apply, and nor does the protection offered by the SRA's position statement. However, for all practical purposes the clinic model and experience is much the same.
- Clinics are typically supervised by university law lecturers with practitioner status; however as employees they count as in-house lawyers for regulatory purposes, so the same in-house restrictions apply, although their work is not analogous to typical in-house practice.

Relevant scenarios can be seen in the Appendix. We address other issues relating to student pro bono under legal education section below.

### ***Legal education and innovation***

The regulatory landscape may continue to evolve, to implement changes associated with the new Solicitors Qualifying Exam (SQE), and to address innovation delivery through technology.

The SRA's overall policy approach is that the proposed new training framework and structure for entering the profession through the SQE is intended to be complimentary to the regulatory reforms of the new Handbook. The intention is that the SQE should be the 'gateway' to legal practice, with the aim of providing more flexible pathways into the profession suited to more flexible models of practice (for example 'freelancing'.) This direction of travel however has been highly controversial, with some stakeholders fearing a diminution of the solicitor 'brand' and practice standards.

There are opportunities offered by the SQE for students/trainees to complete their qualifying work experience in a pro bono clinic context or setting. However, there are misgivings amongst stakeholders and training providers, which we share, that the SQE does not provide sufficient foundational training or insight into important areas of social welfare, family and immigration law. We have produced a more detailed briefing on issues surrounding the SQE.<sup>xvi</sup> The review will need to carefully consider the issues surrounding the SQE, as regulatory authorisation cannot be separated from the qualification and training framework.

### ***Special bodies***

Continued policy uncertainty over 'special bodies' (under sections 23 and 106 of the Legal Services Act) and whether they may need to be licensed in the future to undertake 'reserved' activity, is an ongoing issue for the not-for-profit sector and pro bono clinics and charities. If the policy, as appears to be the current approach of the

Legal Services Board, is that special bodies should remain protected or exempt from the full or equivalent regulatory requirements of operating as 'alternative business structures', should this position be stated in statute? Alternatively, if it remains the policy intention that transitional protection should end, then it is essential that work is undertaken to design arrangements that are appropriate and bespoke for the non-profit sector, such as group licensing which enable providers to share regulatory costs and compliance arrangements. The LSB has previously looked at group licensing as a possible model, but concluded (contrary to many views in the sector and successful group licenses in other areas) that it could be difficult for group license models to provide an appropriate level oversight and supervision over individual providers.<sup>xvii</sup>

Our view is that the transitional provisions have worked satisfactorily and there is no evidence of consumer detriment arising non-profit agencies undertaking reserved legal activity, which in practice tends to be confined to social welfare law ('conduct of litigation') work such as defending possession proceedings in the County Court, or judicial review of local government practices. The non-profit advice and pro bono sectors would benefit significantly from the removal of regulatory uncertainty on this issue. We expect that the review will want to revisit the whole concept of special bodies, and the policy intention behind them, which is to treat, regardless of provider, equivalent services alike for the purposes of entity based-regulation but recognising the specific features and client base in the non-profit sector.

### ***Rules versus guidance***

A pressing challenge for regulators is to achieve an appropriate balance between rules and guidance; this is especially relevant to pro bono practice where flexibility needs to be combined with certainty and clarity.

LawWorks has welcomed the SRA's overall policy approach of simplifying the Handbook, for example by removing duplication of rules at the statutory level.<sup>xviii</sup> We have also welcomed the SRA's production of guidance which sits outside its rules, but it is essential that guidance is clear and helpful. Clear guidance is especially important for small firms and sole practitioners, and for solicitors working in pro bono clinics or in projects managed by small non-profit agencies, as these organisations do not have the compliance resources of big law firms. The SRA and other regulators could benefit from working with organisations, like LawWorks, in the design, development and communication of bespoke guidance in relation to pro bono practice issues.

As an example of where guidance could be more appropriately framed, we would cite the SRA's in-house regulations. Whilst we welcome the good intentions of the SRA in relation to this challenging piece of statutory language, we are not convinced the guidance is helpful, combining as it does a mixture of "factors to consider".<sup>xix</sup> LawWorks' concern around the guidance is that it promotes the very misapprehension surrounding section 15 LSA (and the current Rule 4:10 PFR) which has dogged the profession, namely the idea that as soon as an employer permits, encourages or supports its employees to participate in pro bono arrangements outside the organisation the activity is likely to fall within the statutory prohibition – this is unlikely to have been Parliament's intention. For example, the fact that an employer may provide insurance for pro bono work undertaken by employees or other support, such as the use of IT should not be determinative of whether the pro bono is part of the employer's business.

## ***Waivers – policy and practice***

A way around regulatory 'barriers to pro bono' whether perceived or real, is to apply for a 'waiver'. Waivers have been useful on professional indemnity insurance matters and enabling flexibility to deliver pro bono, for example we operate two waivers from the SRA:

1. a waiver that enables solicitors who are not otherwise employed or as a sole practitioner to deliver pro bono services (e.g., advising at a pro bono clinic). Covering individual LawWorks members, this provides practice opportunities for solicitors who are retired, unemployed or returning after a career break;
2. a waiver that eases the 'burden' on clinics regarding certain Professional Indemnity Insurance Rules, in particular the requirement to have in place 'qualifying' professional indemnity insurance.

However, the process of obtaining waivers can be cumbersome. As our response to an SRA consultation on its waivers policy suggests, waivers may not always be the best approach to regulatory 'exceptionality' issues and overcoming barriers to innovation, as the rules should actively enable innovation to thrive and be sufficiently flexible to avoid the need for waiver applications.<sup>xx</sup>

## ***Multiple regulators and specific sectors***

In particular areas of pro bono practice there are multiple tiers of regulation by different regulators. In these contexts it can be difficult for pro bono projects to navigate and secure appropriate accreditation, particularly given the costs and administration involved. In particular:

- **Debt advice** (licensed by the Financial Conduct Authority's consumer credit advice regime). The introduction of new licencing requirements in 2014 under the Financial Services and Markets Act meant that some pro bono clinics were no longer able to provide advice on debt or money related matters; we have raised this issue with policymakers.<sup>xxi</sup>
- **Immigration advice** (accredited by the Office of the Immigration Services Commissioner).

We hope the review will look at the scope for regulators to collaborate on more bespoke arrangements such as group licensing, or similar arrangements and solutions for pro bono providers which maintain the same regulatory standards but tailored to the operating environment of non-profit and voluntary agencies.

There can also be a role for 'soft' (informal) regulation [Can we use another word – i.e., the Protocol is not regulation?] in re-enforcing standards and quality control, for example the Joint Pro Bono Protocol for Legal Work. Sector wide bodies can also be part of the solution where there are shared objectives with regulators, as LawWorks has been able to demonstrate through our waivers, insurance cover, and latterly through discussions with the SRA on their pro bono position statement.

## ***Reserved and unreserved activity: Authorised persons and entities***

Many of the specific regulatory issues for pro bono concern the intersection between 'scope' and 'authorisation' – in other words how lawyers and the organisations they are attached to are authorised to undertake certain types of pro bono activity. Whilst in

practice a good deal of pro bono activity is not reserved work, it is important that where practitioners are competent or able to take on more specialist pro bono casework involving litigation or other areas of (currently designated) reserved activity, that they are able to do so. The criteria should be 'competency based' rather than 'entity based'. So although we can see the arguments for moving away from regulatory authorisations based on title, to authorisation based on the activity of entities and agents in the legal services market, the conundrum remains of how best to achieve and enforce professional standards that depend on individuals' competencies.

As pro bono practice involves individuals volunteering, often in their own time, and sometimes outside usual areas of practice, the focus should be on competency. As some of the practical scenarios we refer to in the Appendix illustrate, there are limits to how clinics and other models of pro bono can fit around an entity based model of regulatory authorisations. Clinics themselves are not always separately constituted legal entities, and may be established and delivered by groups of individual solicitors.

### ***Public Legal Education (PLE)***

The principal conclusion from CMA's market study, (which is referenced as the trigger for this review) was that the legal services sector is not working well for individual consumers and small businesses, largely because those consumers lack the experience and information they need to understand their needs, to make informed choices, and to engage confidently with providers of legal service.<sup>xxii</sup> This also raises questions about public legal education which is loosely incorporated into the regulatory objectives of the Legal Services Act, and is now more clearly reflected in the LSB's objectives (following consultation on its business plan). Clearly public legal education needs to be promoted across the sector; a good starting point would be for regulators, providers and professional bodies to sign up to the of the Solicitor General's Public Legal Education (PLE) Committee's vision statement and goals for PLE.<sup>xxiii</sup>

### **Concluding thoughts**

We hope the outcomes of the review will assist government in its reflection and assessment of the current regulatory framework, and inform future policy on how the regulatory framework should evolve. From our perspective addressing a few key issues would be helpful:

- In-house pro bono, and section 15 of the Legal Services Act;
- The regulatory status of bodies facilitating or hosting free legal advice clinics; and
- The balance between prescriptive regulation and guidance.

Although many of the issues we have raised in this submission are specific to pro bono, they are relevant to the wider policy and regulatory questions about how the legal professions can best deliver the widest possible access to justice. We support using regulatory levers where appropriate to help improve access to justice.

Regulators can influence this in a number of ways, such as promoting pro bono work as part of the core business of 'being a lawyer' and law firms' corporate social responsibility, and encouraging market entry and development of new models (for example in social welfare law) for delivering services to those with unmet needs or suffering legal exclusion. Ultimately, however, access to justice involves issues of public policy and resources (i.e., sufficient funding for legal aid, law centres and advice agencies), so regulatory aspects should only be considered as one strand.

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## Appendix – Practical scenarios.

Daniela works as an in-house solicitor in the legal department of a construction company, which is not authorised by the SRA. She does pro bono legal work with a University Law Clinic near her office, and the University is a private institution (not falling into the definition of a ‘non-commercial body’ under the Legal Services Act 2007.) The clinic is managed and supervised with student support by the University’s clinical teaching Fellow, who is a solicitor with a practising certificate. Whilst nearly all the work she does at the clinic is one-off legal advice or casework, all unreserved legal activity, one client has asked if she can prepare and represent them in a judicial review application. She will need to consider section 15(4) of the Legal Services Act 2007.

Three retired lawyers are all members of Saint Gabriel’s Church (C of E) which, as part of its social justice mission, hosts several charitable projects, such the local foodbank. They started a pro bono clinic and were joined by several qualified solicitors, and non-legal volunteers to support the project. Clinic sessions are held in the church and the project is overseen by a sub-committee of the Church Council. The clinic has PII in place through an advice services network and adheres to the pro bono charter. Two solicitor volunteers are litigation practitioners at SRA regulated firms, and the lead solicitor is a retired litigation partner with many years’ experience of pro bono, and working in higher courts and tribunals. The clinic provides pro bono advice on a range of legal issues that are within the solicitors’ competencies. Occasionally, the solicitors attending the clinic may be asked by clients to advise on matters in the county court (so might potentially involve ‘conduct of litigation’). The clinic itself however is not a constituted, authorised entity, although the church body itself might be considered special body.

Richard and Rebeca, both solicitors, are long-time friends and collaborators on pro bono projects. Currently Richard is employed by MB solicitors, which is authorised by the SRA. They have a pro bono policy and actively encourage and insure their solicitors to volunteer by providing legal services at the local foodbank, which does not employ any solicitors. All pro bono reserved work is covered by MB solicitors LLP’s supervision, PII and complaints procedures. Rebecca is employed by JPCS solicitors, which is authorised by the SRA; they do not have a pro bono policy, but Rebecca is keen to join her friend Richard at the foodbank. If Rebecca wants to carry on reserved legal services, she could do so as a “freelancer”; under the new SRA Handbook rules, but she will need to notify the SRA that she is practising on her own; in her own name, not that of her firm, and to arrange PII.

Granchester Law Centre hosts a pro bono clinic and received a complaint from a client who was not happy with the advice they had received from a volunteer solicitor who works at the regional office of a prestigious City firm. The clinic was supervised by the Law Centre’s Head of Legal Practice (HLP), who reviewed the file and discussed it with the volunteer solicitor and the organisation’s CEO, following which the HLP telephoned the client to discuss their complaint. Following the call, the HLP sent the client a letter confirming their telephone conversation and providing details of the Legal Ombudsman service. The client was reassured about the advice they had received and on this occasion decided that they would not want to take the matter any further; but six month later they complained again.

## Endnotes

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- <sup>ii</sup> Lawworks Clinics Network report 2017-18 <https://www.lawworks.org.uk/about-us/news/lawworks-clinics-network-report-year-march-2018>
- <sup>ii</sup> <https://www.lawforlife.org.uk/blog/legal-needs-legal-capability-and-the-role-of-public-legal-education/>
- <sup>iii</sup> IRLSR Working Paper: [https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr\\_wp\\_lsr-1\\_rationale\\_1903mu.pdf](https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-1_rationale_1903mu.pdf)
- <sup>iv</sup> *ibid*
- <sup>v</sup> <https://www.lawsociety.org.uk/support-services/practice-management/pro-bono/the-pro-bono-protocol/>
- <sup>vi</sup> <https://www.lawworks.org.uk/about-us/news/lawworks-submission-laspo-implementationreview>
- <sup>vii</sup> <https://research.llegalservicesboard.org.uk/wp-content/media/rep-LSB-special-bodies-final-report-07-07-11-STC-2.pdf>
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