

Independent Adviser

By the advice sector for the advice sector.

Issue 3 Winter 2008-9

The changing face of **pro bono**



A union of **mutual necessity?**

Why **pro bono?**

Setting a precedent:
Manchester School of Law

advice UK

The voice of independent advice

Surviving in the **eye** of the storm

On 8 October 2008 AdviceUK held its first annual conference at the beautiful campus of Warwick University in Coventry, bringing together our members from throughout the country and across the full spectrum of the advice sector for the first time.

In this time of great upheaval for our sector **"Surviving in the eye of the storm"** is part of our efforts to support frontline advice agencies in all the challenges they face. We aimed to equip attendees with the knowledge and experience to endure the storm and to emerge on the other side.

Practical and interactive, the day was anything but dry or boring! We thought that participants would be ready with their views, ideas and suggestions, and as usual you did not let us down.

Whether it was the future of funding and independence for advice centres, Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs), how to win contracts or working with other agencies the whole day gave useful and practical ideas to go back to help improve the day-to-day management of centres.

We presented the findings of our RADICAL project in our new report: *It's the system, stupid*. Copies have been sent to all AdviceUK members but you can also download a copy from www.adviceuk.org.uk. Nick Pearson, AdviceUK's Money Advice Co-ordinator said his fond farewells before moving onto pastures new with a rallying cry for the sector to become more politically engaged. We finished the day with our annual general meeting, which gained its largest ever attendance. Our board of trustees and Chief Executive, Steve Johnson, were delighted by the turnout and the interest taken by our members in the future of the organisation.

Thanks to Resolution Case Management, our software partners for the AdvicePro case management system, we ran a competition throughout the conference open to all attendees. Participants collected stickers as they visited stalls

in our exhibition area and anyone who completed the full set was entered into a draw to win a Nintendo Wii. The lucky winner was Pete Lowen of Birmingham Law Centre, whom, we are reliably informed, is allowed to play on it when the kids are at school.

Jonathan Moles,
Business Development
Manager, AdviceUK

We are already planning for our 2009 annual conference with an even bigger and better programme. If you have any suggestions or are interested in being involved please contact the membership team on 020 7469 5702 or email: membership@adviceuk.org.uk.

The conference would not have been possible without the help and support of the following organisations to whom we give our thanks:
Abbey Legal/Accident Line Croner Consulting, Job Centre Plus, Resolution Case Management, The Ombudsman Service, Turn2Us, Unity Trust Bank.



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On the **box**

On 3 November BBC1's Watchdog did a feature about a rental agency in Leeds with which we have had a great deal of casework. How did we get the coverage? What were the pros and cons?

Leeds as a city does not have a particularly poor housing stock or particularly bad landlords, but where problems do exist they tend to have a significant impact. During the past year alone we have recovered £70,000 from difficult landlords for students, the majority of which was in the form of previously unreturned deposits.

We decided in 2006 that we would use our own student media more effectively. We began to regularly send information to Leeds Student, our student newspaper. Gradually they began to write stories about the impact problem landlords

Diane Pedder,

Advice Manager,
Leeds University Union

was having on students. The local media started to pick up on some of the stories we had passed onto the student newspaper. Every time a story appeared in the press our caseload increased. Eventually in autumn 2007 both The Times and the Daily Mirror picked up one of the stories and our work attracted national media attention. Some students began contacting the Watchdog programme about their cases and Watchdog came up to Leeds to film us with some of our clients.

Last year Watchdog received 200 individual complaints from students about another agency in Leeds. Again the Watchdog team contacted us to ask for help in putting together a programme.

The pros

- Landlords don't want bad press. One of the featured landlords came to us and settled many outstanding cases in the hope that the first Watchdog programme in 2007 would be pulled. It wasn't, as he still owed many tens of thousands of pounds, but a significant number of our cases were settled quickly.
- All the press coverage coincided with record attendance at our house-hunting talks and contract checking sessions with minimal marketing cost.
- We've witnessed a rise in student activism; they know they can expose wrong doing and have the right to express an opinion.
- Other landlords have been very keen to work with us, asking us for advice on how they can do a better job in the hope that we will recommend them to students.
- We now have some great media contacts, who are sometimes able to share their investigations with us.
- We have raised our profile as an effective student advice centre.

The cons

- You can't control how the media will turn your information into a story – they need to put their own angle on it, for their audience.
- Working with the media, especially TV, is time-consuming. They need you to communicate in soundbites and this takes experience to develop. Advisers are not always the best at summarising complex information into short soundbites, as we are too often used to trying to ensure that we have covered all the options.
- You will probably be threatened with legal action. But so long as you have checked all your information, and can prove what you've said is accurate you can confidently defend any action.



Leeds Student, Daily Mirror

A union of *mutual necessity?*

Paul Newdick, Chair of LawWorks and **Jacqueline Carr**, Director of Brent Citizens Advice Bureau and a Trustee of LawWorks, give some insight into the needy relationship between lawyers and the advice sector.

Do-gooding commercial lawyers and the advice sector are not always seen as a marriage made in heaven. However with the current environment affecting the sector it is a relationship where the two partners need each other more than they may realise. Failure to strengthen the relationship in the current climate will impact on both – in a worse case scenario, advice agencies could spiral into downward debt and possibly closure and pro bono delivery could go into decline.

The catastrophic impact of the change in Legal Services Commission (LSC) funding and forcing the voluntary sector into competitive bidding on Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs) not only puts the existence of many agencies in jeopardy, but also reduces outlets for pro bono opportunities – opportunities law firms can ill afford to lose, if they are to meet the demands and aspirations of their staff and, importantly, their recruits. Both partners need each other, but do they realise they possess one of the keys to success in the bidding war?

What key? Uniquely, the advice sector has the ability to tap into that rich seam of extremely valuable, but free, pro bono talent. But it is a seam which is valuable not just for the resource it brings to the advice centre in the form of a pro bono clinic. Above this, it can provide a winning edge over the for-profit bidders who have no access to this resource. A true partnership between pro bono and the not-for-profit advice agencies wins the added value argument hands down. Yet how many of those bidding for contracts which mean the difference of life or death for the agency have articulated the added value case of a pro bono clinic as an integral part of the service being delivered?

The cashflow crisis the LSC has created in its change of contract funding has placed appalling pressure on those running advice agencies and those responsible for their governance. The suggestion to not-for-profit volunteer trustees that they should deal with LSC claw backs by borrowing from the banks (even before the present credit crisis) demonstrates a worrying lack of understanding of how the sector operates. Making not-for-profit and for-profit organisations go through head to head competitive bids ignores the whole ethos of the voluntary sector. The one size fits all, homogenised, unit based, target driven funding regime for all advice providers may work for hard-nosed commercially savvy for-profit organisations who can and do take risks. For the not-for-profit charity, by its constitution and legal status being obliged to be risk averse, it is not difficult to see why we have already lost so many advice centres, Citizens Advice Bureaux and Law Centres across the country, from Liverpool to Leicester, Gateshead to Lewisham. We have seen that the sector has been ill-equipped to deal with this new environment. Yet how many of those agencies fighting for survival in this commercial environment have sought advice and assistance from the law firms who support them on how to survive?

Whilst the lobbying of the government must continue to preserve the very sector it has so publicly said it respects and supports, there is a real need to deal with the here and now. Until the bidding war subsides, the advice sector has to battle on. In doing so, it needs to understand it has an ally in the pro bono movement and the law firms which support it. The big guns of the legal profession, for once, are not hired guns. Superficially, they might be seen as an alternative funding source, but there are deeper, more fundamental aspects to the relationship which the advice sector needs to understand and make use of.

Firstly, the huge respect volunteer lawyers and their firms have for those working on the frontline, day in day out.



Secondly, those volunteers are unlikely to give of their time for free to a commercial organisation that has out-bid a law centre or advice centre for funding. In such cases new pro bono outlets will have to be found. If pro bono is a healthy addiction for lawyers, it is the voluntary advice sector that can feed the habit.

Thirdly, beyond their commitment to a pro bono clinic, law firms have knowledge and expertise of the commercial world into which the voluntary sector has been thrust – from the bidding process to the strategic planning of reduced or changed resources, both human and financial.

Agencies that have pro bono clinics need to start quantifying the added value this brings to the organisation. Look at and value every hour of every volunteer's time and use it mercilessly in demonstrating the unique ability the sector has to deliver this valuable resource.

For agencies with no LawWorks' clinic, or no pro bono service at all, then there has never been a more important time to have one, not just to help the needs of your clients but help secure your very existence.

LawWorks is fundamentally committed to help in this process, both in the lobbying needed to effect change to a flawed system, but also to help articulate the argument that pro bono needs to come onto every advice agency balance sheet as a valuable, and unique asset. With it, there is a chance of surviving the current crisis and winning the bidding war. Together we will be a force to be reckoned with, where trust, mutual respect and a commitment to delivery will win over, even in an environment driven by commoditisation and profit. Together we can present the unarguable case of added value.

Thinking of setting up a pro bono legal service, but not sure where to start? **Glenda Terry**, AdviceUK's Development Consultant (Quality and Access), gives some tips based on her previous experience at Leicester Law Centre.

In 2002, Leicester Law Centre established a pro bono advice service which provided a valuable service to our users until the Law Centre closed earlier this year. This article sets out to describe what sort of advice services not-for-profit advice agencies may be able to offer their clients through pro bono initiatives, and how a pro bono service may benefit an advice agency and its clients. It also suggests the questions advice agencies should consider before embarking on a pro bono scheme and alerts them to the work involved in establishing and supporting a pro bono service.

Why pro bono?

Many advice agencies say that they cannot meet the demand for advice from their clients – either because they do not have sufficient capacity to respond to requests for advice in those areas of law in which they offer a service, or because clients need

advice on a matter which falls outside the remit of the advice service. Many agencies also report difficulties in referring their clients to other advice services because of a lack of free advice, or because clients are reluctant to approach solicitors' firms. We found that clients who had already received advice from us on, for example, an employment matter, were very pleased to be offered an appointment at a familiar setting for help on a different matter (such as a personal injury claim).

What are the advantages?

A pro bono service can be of benefit to both clients and the advice agency. Clients have the advantage of additional free advice services; agencies have the opportunity to develop productive links with local solicitors' firms. There are also many indirect benefits in creating a climate of understanding and goodwill between the not-for-profit and commercial sectors. The relationship you develop may lead to other options for working together – for example as partners within a CLAC or CLAN; a local referral network comprising both not-for-profit and private providers; mutual consultancy arrangements. One consequence of our pro bono scheme was that several local firms joined our referral network.

Getting started on pro bono



START

Where to start

In order to decide whether a pro bono service would be a beneficial addition to your agency's work, it will be useful to answer the following questions:

1. What sort of help do your clients need which you cannot provide in-house?

Ideally, the new service should complement the work you already do and meet an identified need for advice in particular areas of law. What do your records tell you about unmet need as presented by your clients? Having considered this information, what do you want the pro bono service to do?

- Give one off free advice
- Take on cases for clients
- Represent your clients at tribunals or court

2. How will the pro bono service fit within your existing in-house services?

- How will clients gain access to the service? Is it to operate as a drop-in or as an appointments only service?
- Will it be advertised to the general public or will it be available only to the people who use your services already?

If you are a member of an advice network, you may want to consult with other partners to see whether their clients would also benefit from the service.

3. Who will be responsible for managing the service?

The agency will need to invest time and resources to establish the pro bono service and to ensure that it runs smoothly. Someone will need to:

- recruit volunteers for the service
- prepare a written summary of what the service does (and doesn't do)
- prepare rotas and standard documents and procedures
- meet and greet volunteers and clients when they attend for the sessions
- manage the relationship between the agency, the clients and the volunteers.

Who to contact

Once you have decided what you want from the pro bono service, you will need to recruit volunteers. A good starting point may be a large local law firm or a firm with which you have had productive contact in the past. The volunteers should be experienced in advising in the categories of law you wish to offer at the sessions. It will not be difficult to find solicitors who practise in areas such as family, employment or personal injury – but solicitors who specialise in welfare benefits or debt are harder to find.

Where to get further help

LawWorks – Solicitors' Pro Bono Group (SPBG):

www.lawworks.org.uk

Tel. 0207 929 5601

Law Society

(for contact details of local law societies):

www.lawsociety.org.uk

Tel. 0207 242 1222

Community Legal Advice

(for details of local solicitors):

www.communitylegaladvice.org.uk

Checklist - before you start

1. What sort of service do you want?
2. How will you advertise the service?
3. How will clients gain access to it?
4. When and where will the sessions take place?
5. Does your professional indemnity insurance have appropriate cover for work done by volunteers or solicitors?
6. Who will organise and support the sessions?
7. Can you provide refreshments for volunteers (and perhaps car parking facilities)?
8. What records will be kept of the advice given?
9. Will pro bono clients have to be eligible for legal aid (depending on the type of service offered)?
10. How will you obtain feedback from clients and volunteers?

Need a **hand?**

Don't get stressed out. Find the answers to a whole range of tax, VAT, PAYE, payroll, HR, health and safety and commercial legal problems in this new regular feature. Croner, which runs a management support helpline for AdviceUK members, offers you help here on a range of organisational management issues.

If you've got a problem you'd like to see addressed here please email it to membership@adviceuk.org.uk clearly marked Independent Adviser surgery question. Questions will be posted here anonymously and not attributed to a particular organisation.

Q: Are we required to provide a prayer room for staff?

A: There is no absolute requirement to provide a prayer room for staff, but if an employee, or several employees request a room, an employer must consider whether it is possible to provide these facilities. The provision of a room will depend on the size of the employer's premises, room availability and any other aspects which might have an adverse impact on the needs of the business. To refuse a request without considering these issues could potentially result in a discrimination claim by the employee(s) under the Employment Equality (Religion or Belief) Regulations 2003.

If faced with a request for a prayer room it is considered best practice for the employer to discuss the matter with the staff to reach a solution which is satisfactory for everyone (for example, at a staff meeting). If a room can be made available, even if it is just at certain times of the day, the room should be offered equally to employees of all faiths. It may be best to describe the room as one set aside for prayer and contemplation and treat this as a separate space from a normal rest room. An employer is not expected to incur significant expense in providing a room but to use existing facilities which may include a small amount of storage, if requested by staff, for items such as prayer mats.

Q: We are in the process of short listing for a manager. We are concerned as we have ended up with a short list of all female candidates. Is this a problem?

A: It should be your aim to recruit the best person for the job regardless of their sex. The wording of your advertisements should not seem biased to



one particular sex and your method of advertising should be widespread so that it is easily accessible to both sexes.

Before advertising for staff, you should prepare a specification of the type of person you want in the role, setting out the skills, qualifications and experience, both essential and desirable for the post. You should also have a job description for the role covering the overall purpose of the job, its reporting relationships, the extent of the job holder's

authority, the duties, how performance is to be measured and any special factors unique to that particular job. The job description and person specification should not contain any statements which could potentially be discriminatory.

Your short listing should be based on your job description and person specification and to avoid any personal bias, it would be a good idea for more than one manager to have

input. Assuming that you have advertised widely and carefully carried out your short listing, and the outcome is that only female candidates have been selected for interview, this situation is unlikely to be discriminatory. You would not be required to add a male candidate, who did not match the short listing criteria or re-advertise the post. If there were allegations made of sex discrimination, you should be able to justify on objective grounds how your recruitment procedure had been carried out.

Q: Can employees with less than a year's service claim unfair dismissal if they are dismissed when there is a TUPE transfer?

A: Employees with a year's service or more can claim unfair dismissal if they are dismissed either before or after a relevant transfer covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE" for short). This is the case if they are dismissed and the sole or principal reason for the dismissal is the transfer itself or a reason

connected with the transfer, and that reason is not an economic, technical or organisational reason entailing changes in the workforce.

Employees with any length of service (ie including those who have under a year's service) can claim unfair dismissal if they can show that they were dismissed for alleging that their employer had infringed their statutory rights conferred by the Transfer of Undertakings (Protection of Employment) Regulations 2006. This right is set out in s 104 Employment Rights Act 1996. To bring a claim under this section, one would assume that the employees would need to show that there had been some sort of discussion at least about their rights under TUPE with their employer before the employer had dismissed them. This could quite easily happen however, particularly if the employees had sought legal advice and so it is advisable to treat all your employees, regardless of their length of service, as if they were protected from unfair dismissal under TUPE.

For further advice

visit www.croner.co.uk or call 0800 634 1700

AdviceUK members only can access a dedicated management support helpline with Croner. For details of how to access the helpline talk to the member staff in your organisation who acts as our membership liaison or contact the AdviceUK membership team direct membership@adviceuk.org.uk or 020 7469 5702.

The views and advice given in this article are not intended to provide specific, definitive advice. Accordingly specific professional advice should be sought on any issue or course of action you may be considering.

About Croner

Croner, part of Wolters Kluwer (UK) Limited, is a leading provider of legal guidance and best practice advice and support in the critical areas of; human resources; health and safety; education and healthcare; environmental management; manufacturing and construction; and international trade and transport to both public and private organisations of all sizes and structures. For more information visit www.croner.co.uk

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