



# Something for nothing

MANY RECEPTIONS HAVE BEEN HELD AT The Law Society's Reading Room. Yet the reception on 3 November 2008, hosted by the Attorney General, Baroness Patricia Scotland, had a more serious purpose than most. What was the occasion? The presence of Irwin Mitchell's senior partner, Michael Napier QC – the Attorney General's pro bono envoy – was one clue. But the biggest tip-off lay in the stands eagerly staffed by lawyers highlighting initiatives from death penalty advice and human rights defence, to working in international development. This pro bono work is welcomed by Baroness Scotland. 'There has been a long tradition of deploying UK legal expertise to assist those in need in other countries, especially in the developing world,' she notes.

The reception launched a database of international pro bono projects, and a protocol to promote high standards in pro bono work abroad. Both are initiatives of the Attorney General's international pro bono committee. The database includes details of over 200 projects in around 75 countries, and is aimed at encouraging best practice, co-ordinating UK-originated pro-bono work around

2008's Pro Bono Week has seen a renewed emphasis on international pro bono work, thanks to the Attorney General, says Ben Rigby

the globe, and assisting in attracting resources.

To supplement the database, a core set of principles will set standards for those delivering international pro bono work. The statement of principles has been endorsed by The Law Society and others, including the International Bar Association (IBA) and the Bar Council. Paul Marsh, president of The Law Society, notes: 'The statement of principles and International pro bono database are developments that the profession can be proud of.' He adds: 'They mark another key stage in helping meet the unmet legal need in this country and in the developing world.'

## ALL GOOD WORK?

With companies happy to allow staff to raise money by cycling to Cuba, or climbing Kilimanjaro, doing good work has generally never been easier. But can lawyers

genuinely do much more good for noble causes by making their professional skills available for free?

Baker & McKenzie's pro bono partner Stephen Jones says there are different aspects to volunteering – both the legal and non-legal side. 'Our aim is to encourage people to do that which they feel the most good about doing,' he explains. 'We give our time, skills and money in different ways. We participate in initiatives that are more to do with charitable giving, for which we maintain a separate programme of participation, where we agree to match our donations to that raised by individuals. This is so people feel they can find the best way to do something that's relevant to them.'

Charities like Cancer Research UK and children's hospice Richard House have benefited as a result. Oxfam's in-house counsel Joss Saunders says: 'It's important to distinguish between projects aiming to





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Nigel Dodds, The Law Society Charity

> help somewhere – like painting a school – which is corporate social responsibility, and legal advice through pro bono.' He adds: 'There can be overlaps between different types of project, and you can have younger lawyers involved in both.'

A different distinction matters to Chris Marshall, Reed Smith's European pro bono and community manager, who points out: 'Law is fundamental to people's lives. It enables them to own property, ensures they can access healthcare and defines an individual's relations with their employer, their government and their neighbour. By offering their skills for free, lawyers can make an incredible difference.' He gives one example: 'Globally, four billion people live without access to the law, according to the Commission on Legal Empowerment of the Poor. By working on pro bono projects we can ensure that number is brought down.'

What do those involved with the sector think? Jeffrey Steinhardt, a former in-house lawyer at Microsoft, is a trustee of a charity, Evidence for Development. He agrees with Marshall's assertion that the legal profession enjoys a privileged position in most societies, with skills and resources that are in short supply. Steinhardt warns, however: 'You need to be careful that in providing resources "for free" you have the same level of commitment, continuity, and high standards that you bring to your "day job" and regular clients.'

Rebecca Hilsenrath, the new chief executive of LawWorks (the operating name of the Solicitors Pro Bono Group), says: 'Many lawyers, even within LawWorks member firms, do not see pro bono work as their responsibility but, to develop pro bono further, it is important for the profession to be able to rely on role models at senior

levels.' She adds: 'Unfortunately, too many firms rely on trainees and junior associates to carry out pro bono work.'

The Attorney General, speaking exclusively to *IHL*, referred to the new principles. 'Of course the same high standards must apply,' she says. 'There should be no distinction in terms of quality as to the advice given, whether you are paid, or unpaid.' She adds: 'What counts is that you are doing a job, doing it well, and with care and attention equal to that of paid work. That's really important.'

Given the importance that technology plays in delivering global legal services, the advent of the pro bono database is a good thing, says Marshall: 'Having a single database of projects and an agreed set of principles by which all will work is a significant achievement.'

Yet the IBA also has its own database. Won't this lead to duplication in doing good work? Not so, says Anurag Bana, an IBA project lawyer. Bana points out that the IBA participated in the development of the UK database, whereas the IBA's international pro bono website (which can be found at [www.internationalprobono.com](http://www.internationalprobono.com)) is more similar to a moderated wiki.

Bana explains: 'It provides facilities for legal professionals worldwide to exchange experiences and information on pro bono initiatives across jurisdictions in a different manner.' He argues: 'Our focus is on archiving and sharing resources of every kind with pro bono practitioners to facilitate their practice and encourage dialogue, rather than providing details on current projects.'

## CONTEXT IS ALL

One aspect of getting involved is knowing what it is that you are getting into. That



CONNOR: pitches taking account of pro bono

means understanding the cultural and political background to a project. In particular, knowing how those working in the field go about assessing the need for involvement. Saunders says: 'The level of familiarity you need to have with the cultural and political background varies from project to project. Some projects are straightforward; you will apply UK legal skills to a technical problem, and deal with a UK-resident lawyer. Others will require a second stage of understanding.'

'Quite often when law firms do contracts they can produce rather heavy contracts, with extensive documentation, which can be intimidating,' Saunders explains. 'It's important that any contract reflects how charities work, and the relationships, property, and people that charities deal with.'

So producing a long corporate document with extensive articles of association isn't usually appropriate when

## Case study: Baroness Scotland, Attorney General

Not just responsible for co-ordinating pro bono work, Baroness Scotland is also responsible for the government's own lawyers in the Government Legal Service and Crown Prosecution Service.

Does she see their role as important? Unquestionably. 'It's absolutely right that I encourage members of the GLS and CPS to take part in pro bono activities,' she says. 'There are many people across government who are engaged with pro bono, people whose day-to-day role is to serve justice, internationally.' She adds: 'They are making sure that the rule of law is accessible in countries other than our own, in addition to those who work in the law here in the UK.'

Given that the new Director of Public Prosecutions (DPP), Keir Starmer QC, is a past winner of the Bar's Pro Bono Award, she notes: 'I am sure that Keir Starmer will encourage pro bono within the CPS; it is in his life blood.'

Not content with encouraging the UK's lawyers to take part, the Attorney General says that she was very proud to place the subject on the agenda at the Commonwealth Law Ministers meeting in Edinburgh in July 2008. She notes: 'There was unanimous support from all Law Ministers for the idea that the co-ordination of pro bono is something we should try to do, and develop a pro bono committee in every jurisdiction. That each should try to develop toolkits so we can be the best, and adhere to a common set of principles.' She adds that she would encourage all C&I Group members to do pro bono. 'I have seen a number of in-house lawyers benefit from the experience of advising in this way, that has reconnected them with the wellspring of justice that got them into the law in the first instance,' she says. 'It has focused their attention at work and outside it. Their employers should value the difference they make, as they will do in themselves.'

charities are setting up a joint venture together. Instead, Saunders advises, 'working together on a short form document as an intermediate step, which can be adapted for use in another country'. He adds that cultural understanding is important, because, for example, while land rights can be geographically significant and legally defined to a real estate lawyer, the notion can be different for a nomadic society in Kenya, say, where no fixed boundaries apply. To Saunders, understanding such differences helps to enable lawyers to be flexible in guidance and drafting contracts. 'That's where skills in comparative law, of different jurisdictions, of international practice, become so important,' he says. 'The presence of commercial lawyers, in this process, who get this, means that those firms in the City who assist us, both in London and across their networks, have a real benefit for us.'

### IMPORTANCE OF NEED

Steinhardt points to another important aspect of international pro bono - the role played by organisations focused on development issues: 'Assessing need and securing stakeholder engagement are often areas addressed by institutions that have specialists in administration and evaluation of structural reforms and social assistance, such as aid agencies, development specialists or non-governmental organisations.'

This resonates with Advocates for International Development (A4ID, see case study, above). A4ID's executive officer Katie Hutt says: 'It is crucial to understand the cultural and political background of each piece of work in order to be able to effectively meet the needs of the client.'

The IBA also assesses need. As Bana explains: 'The IBA uses its committees as the crucible for project ideas, using their members as an advisory group to determine what the most pressing needs are and how they are best met given the cultural and political background.' When project ideas are put forward, and supported by the relevant committees, then the IBA assesses whether any similar projects are already in existence, and whether it can bring a new or broader perspective to the subject at hand.

How does it work for law firms? Jones says Baker & McKenzie has a pro bono steering committee at international level, with representatives across the international firm and the regions. Tom Cassels, a London partner, represents the EU region, as well as being London's lead corporate social responsibility (CSR) partner. A dual role like his helps to create a joined-up approach; balancing domestic and international commitments.

Like Marshall, any projects Jones' firm does are subject to the same client intake procedures as other matters. This enables the firm to assess how the project fits with its overall ethos, and its objectives in this area. Jones says: 'We take a broad view, and take on humanitarian causes with an international dimension, which as an

international firm plays to our strengths, as well as local issues.'

Marshall adds: 'It is important to recognise what your local partner can and cannot do. They may be working under political limitations. There may be restrictions on how they as local lawyers work as a profession.' He notes: 'In all pro bono, you want to make sure that your team does their homework.'

Jones agrees: 'We don't often turn things down, but when considering whether to take on a particular piece of work, we look at the work commitments of individuals and departments, as well as the nature of the work itself.'

How do the various charities ensure continuity, so that they are sustainable on a local level, and are self-sustaining over the longer term? Marshall says: 'Sustainability is an important challenge. Some pro bono projects only require a short-term involvement; for instance, for the duration of a case.' For many, however, a longer-term approach is needed. This has to involve taking account of what has gone before, as well as assessing what will be needed into the future. Steinhardt says: 'The resources question is a tough one. Ensuring continuity depends heavily on whether there is truly local involvement, capacity building, and empowerment. >

## Case study: Katie Hutt, Advocates for International Development (A4ID)

Previously featured in December 2007's *IHL* (see *IHL* 156, p27), A4ID's executive officer Katie Hutt is clear that the umbrella organisation still offers real benefits to those it supports. 'In many circumstances, those that receive pro bono support through A4ID would not otherwise be able to access a lawyer,' she says. 'The implications of this are huge. For example, new pro-development legislation supporting the protection of natural resources in Africa will be implemented in line with international standards as a result of the free legal support provided through A4ID.'

How does Hutt assess the strength of any application? She explains that before any project is referred by A4ID to its network of legal partners, extensive due diligence is carried out by A4ID's projects officer, Elisabeth Baraka. 'This involves interviewing the referee, either in person or over the phone,' she says, 'learning about the context of the issues raised, examining the particular request for legal assistance and reviewing the relevant documentation.' Hutt notes: 'Elisabeth is very familiar with the importance of needs assessments, stakeholder engagement and the range of legal issues regularly referred to A4ID.'

The success of the organisation is attested to by a participant. Chris Marshall, Reed Smith's European pro bono and community manager says: 'The majority of Reed Smith's international pro bono work is conducted with the support of organisations like A4ID. The advantage of working with them is that you know what you are getting. The project has been defined, they've done the research, the due diligence has been completed and you know that your lawyers are working on something that will be good.' He adds: 'A4ID presents a simple and effective way for any legal team to get involved.'

The Law Society Charity also donated £8,000 to A4ID. The charity's chair, Nigel Dodds, says: 'The Charity made a grant to this organisation as it felt there were considerable advantages in cost-benefit terms to developing countries in having lawyers to assist in the facilitation of international trade, debt and development.'



**HILSENATH: local projects are also valuable**

- Teaching and information sharing are the fundamental tools of sustainable development.'

Capable local professionals must be involved as part of the effort. Steinhart believes these local professionals must stay in the community and not be beholden to factional interests. They must have resources and be available to continue to build upon outside efforts. 'Over time, they become the new experts,' he says.

### ON THE HOME FRONT

One point that has often been made is that there may be a danger that in promoting international pro bono work, people would be drawn to this rather than the domestic alternative.

Hilsenrath tackles this point head-on: 'The need for both domestic and international pro bono is immense. It is unlikely that one will detract from the

other, largely because the two tend to attract different types of lawyer with different skill-sets, approaches and backgrounds.' She argues: 'The success of LawWorks lies in providing as varied a menu as possible to attract those with different interests. In that sense, international pro bono work is a welcome addition to the range of domestic projects.'

Hilsenrath acknowledges that many lawyers not involved in international work seek local ways to make a difference: 'I hope that increasing co-operation will lead to mutual learning and support, and greater efficiency throughout the sector.'

Saunders agrees: 'The kinds of lawyers involved in international work have been involved in advice centres and the like. The key is that there is enough provision in the law to enable projects to be fulfilled in the UK as well as abroad.' He adds: 'It's often the case that senior individuals gravitate to international work as they progress in their careers.'

Nigel Dodds, chair of the Law Society Charity, which has funded many of these projects, says: 'The solicitors' profession is extremely diverse and I am confident that volunteers can be found to satisfy the need for pro bono work both here and abroad. In financial terms, the dominant interest of the Charity is in domestic projects, where we do much good by stealth.'

Baroness Scotland is clear on the same point: 'Most of us started doing pro bono when we were young, and now, even those not so young consider that it is part of who you are as a lawyer.'

### IMPORTANCE OF CO-ORDINATION

Given the plethora of bodies involved, the co-ordination supplied by the Attorney



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General's committees have assumed new importance. It would have been easy for the subject to have been deprioritised by a new Minister since 2007; but not so.

Scotland pays tribute to her predecessor for starting the work. 'To some extent, Lord Peter Goldsmith started the co-ordination process as a "midwife" for change, whereas I have assisted with the "delivery" of the finished product that he started in bringing everyone together,' she notes. 'By doing this, and providing a structure for future good work, I am pleased that many others are now able to participate in such a way that their own activities keep their own shape and also gain synergies from other participants, without any duplication.'

Saunders says: 'All of the bodies involved in brokering relationships - the IBA, A4ID and LawWorks - perform a valuable service. They all add value to our relationships, because they enable communication between lawyers and their pro bono clients and allow the best use of lawyers.' They also help manage client expectations, by spelling out what the project is and what the requirements are, so that both sides understand their obligations. Saunders adds that all three work well together: 'A4ID is crucial in involving UK-based lawyers, while the IBA has really good international coverage; for example, across Latin America. The Law Society deserves praise for a variety of work ranging from book buses in Central Asia, to rule of law projects in Pakistan.'

Rosalind Connor, pro bono partner at Jones Day, agrees: 'The Law Society's focus on international projects, for example, is a good one, and I think they do assist with support, particularly in helping to fund a project.'

However, the source of that funding is potentially facing harder times. The Law Society Charity has given significant sums to international and domestic pro bono, amongst many legal causes, yet cuts at Chancery Lane mean that there may be difficulties in the future. Dodds says: 'The Charity is extremely grateful to The Law Society for providing it with administrative and logistical support. The withdrawal of The Law Society as a major funder for the future means that the Charity is working in uncertain times.' He adds: 'We will be looking to individuals within the profession, local law societies, associations, groups and sections to help us in the drive to secure funds.'

#### IN-HOUSE HELP

So how does the experience of international pro bono relate to corporate clients examining a law firm's CSR and pro bono policy?

Connor says: 'The past few years have seen pitches having to take account of pro bono in a significant way.'

Hilsenrath links this to a wider view: 'Clients are increasingly interested in the firm's profile, above and beyond technical capacity. This is particularly true in relation to diversity, but we are now seeing questions beginning to be asked about pro bono as well. This happens increasingly in America, and the UK is likely to follow.'

Jan Eijbouts of the IBA's CSR committee, and former general counsel at Akzo Nobel, says that, despite a lack of uniformity between the civil and common law jurisdictions, there has been plenty of progress. 'Pro bono work is encouraged and is being allowed, within limits, by major companies in the US and in the UK,' he reports. 'At the IBA, both the Corporate



SCOTLAND: providing a structure for pro bono

Counsel Forum and the CSR committee are emphasising this topic.' He adds: 'The Corporate Counsel Forum is currently drafting a chapter for the IBA Code of Ethics for specific application to in-house counsel, which addresses CSR, amongst many other topics.'

It seems that the sophistication and growth of projects in this area are not just politically, but reputationally significant. And no wonder - as Hutt notes, A4ID saved the development sector almost £1m over the past year as a direct result of the free legal advice provided by its legal partners. The firm hope is that, with a recession turning attention away from non-core concerns, pro bono work is entrenched enough to hold onto the gains of recent years. One thing is certain: the Attorney General's assertion that pro bono is part of all lawyers' DNA is about to be tested. **IHL**

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