



**Impressions from National Pro Bono Week in the UK
12-17 November 2007**

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Attorney-General of England and Wales, Baroness Patricia Scotland opens the Joint National Pro Bono Conference

Background

The Legal Services Commission

Overall responsibility for the strategy and resourcing of legal services rests with The Lord Chancellor and Secretary of State for Justice, the Right Hon Jack Straw. He has in the new Ministry of Justice (created May 2007), two Ministers of State and three Parliamentary Under Secretaries of State, one of whom is responsible for legal aid and the Legal Services Commission (“LSC”), another responsible for taking the lead on criminal law and another for civil and family justice.

The overall annual legal aid budget in the UK is about £2bn, which according to government equates to £35 a head for each citizen compared to approximately \$16 a head in Australia.¹ Since 1997, the cost of legal aid has increased by 10% in real terms

¹ Based on National Legal Aid annual figures of \$147m (Commonwealth) and \$172m (States) on a population of 20m Australians. Sourced from national legal aid at www.nla.aust.net.au

but from £1.5 to £2.1 billion in actual terms² although rates for practitioners have remained much the same.³ Over the past 30 years, legal aid eligibility has fallen from 75% to 25% of the population⁴ but compared to legal aid in Australia, it still has a large spend on civil representation and advice. In 2006/2007, the LSC spent 39% of its legal aid cash spend of £2,094.7m.on civil work compared to 56% for criminal aid.⁵

The LSC is a non-departmental public body, subject to Ministerial direction, which provides funds to support in whole or in part many legal aid firms, law centres, Citizen Advice Bureaus (“CABs”) and LawWorks clinics to provide legal advice and assistance. Its activities are overseen by a board of independent commissioners.

The LSC also supports a Criminal Defence Service but, unlike Australia where Legal Aid employs its own lawyers to deliver some of its legal services, is not otherwise a legal service provider apart from CLS Direct, a free telephone advice service started by the LSC in 2004 which is now planned to be significantly developed and expanded⁶. At present it averages 50,000 calls a month⁷. Any organization that wants to provide legal aid services must have a contract with the LSC and this is where great change is now occurring under ‘radical reform’⁸ of the legal aid program that aims to shift legal aid service providers into a market based system.⁹

Civil legal services are delivered under the umbrella of the Community Legal Service (“CLS”), established by the *Access to Justice Act 1999*, and is described not as a single body or organization but in terms of its purposes – principally to promote the availability of legal services, information and advice and representation – in civil law. So the CLS potentially includes all those who fund, provide or facilitate civil legal advice services,¹⁰ which notably include local councils who contribute to CABs (see below). The LSC has the duty of developing and maintaining the CLS and caps its own funding for civil legal services.

Legal Aid Reform

Following Lord Carter’s review of legal aid procurement last year and an internal review by the LSC already well underway before Lord *Carter’s review*, significant changes have been introduced to legal aid. The outcomes sought by government are consolidation of legal aid service providers and greater efficiencies in the purchase of legal aid services.

² Legal Services Commission CORPORATE PLAN 2007/8 – 2009/10, p. 19.

³ Conversation with Robert Gill, CEO LawWorks and Steven Hynes, Director Legal Action Group.

⁴ Ibid

⁵ Legal Service Commission, Annual Report and Accounts 2006/2007, p.8. NB 26% of budget was spent on civil representation.

⁶ Ibid. P. 18 - £9m. to be spent to expand the service.

⁷ Op Cit 2. pp 2 and 13.

⁸ Op Cit 2, . p. 1.

⁹ The blueprint for this is contained in *Legal Aid Reform: The Way Ahead* published by the LSC November 2006 based on Lord Carter’s review of the procurement of legal aid published July 2006.

¹⁰ The Legal Services Commission’s Strategy for the Community Legal Service 2006-2011, March 2006, p.

The main changes are to introduce fixed fees for legally aided matters (from 1 October 2007) and to instigate competitive tendering for legal aid service provision. The aim is to have fewer but larger contracts with “Preferred Suppliers” contracting at a regional and sometimes national level. Being tendered out are contracts to provide Community Legal Advice Centres (“**CLACS**”) and Community Legal Advice Networks (“**CLANS**”).¹¹ The LSC have split England and Wales into roughly 135 procurement areas and in each area they expect the outcome to be one social welfare law contract holder and several providers delivering ‘joined-up’ services for the other four main areas of law.¹² The LSC hopes that this consolidation will occur without a significant reduction in the total number of street-front outlets where legal advice and assistance can be sought, but this is by no means an assured outcome.

Interestingly, the LSC had a policy of encouraging regional service providers to cooperate through a Community Legal Service Partnerships scheme which seem similar to the Australian Cooperative Legal Service Delivery Model but this has not been pursued as a strategy since about 2003. LSC hopes that the vestiges of the relationships and networks established under the program may form the basis for some of the new proposed CLANs. The new arrangements will render existing Regional Legal Service Committees redundant.¹³

In the face of current changes many legal aid firms can not afford to continue practising in their current form and are simply going out of business creating unemployed lawyers and causing ‘career legal aid lawyers’ to have to join larger practices or change their areas of practice. Already there are examples of Law Centres, CABs and legal aid firms joining forces to secure a contract to provide a CLAC¹⁴.

¹¹ Independent Lawyer November 2007: “CLACS, the only show in town” , p8.

¹² Ibid. Interview with Crispin Passmore, director of the CLS, p.9 Areas of law I assume to be crime, family, debt and employment.

¹³ Op. Cit 10. p.18

¹⁴ Gateshead CLAC. Op Cit 4 p.8

In the past two years, the Law Society has become vocal in supporting the practitioners who are being dislocated by the change. This increased commodification of legal aid services is causing significant tension within the British legal system and it was against this backdrop that National Pro Bono Week was held.



The Law Society of England and Wales, Chancery Lane, London

Legal Service Providers

The main front line service providers to the low income and disadvantaged consist of CABs Law Centres, Legal Aid Firms (often referred to as High Street firms) and other Independent Advice Centres. Independent Advice Centres are various charities and NGOs who provide advice in specialist areas such as housing, welfare benefits and debt advice.

Legal Aid firms

The UK has dedicated legal aid firms that seem to be a UK phenomena. Development of these specialist legal practices was encouraged by the government in the 1990s (through the then Legal Aid Board, which in 1999 became the LSC) with a view to creating service providers with a high degree of skill and experience in the legal aid areas of practice such as crime, family, debt, welfare benefits, employment and housing¹⁵. Numbers of legal aid firms in England and Wales have fallen from 8500 to just over 4000 in the past five years and look to fall a lot further under the legal aid reforms. Over the past 15 years, these firms have developed a relationship of dependency on the LSC but are now being forced out of business or into partnerships

¹⁵ Conversation with Steve Hynes, Director, Legal Action Group

with other service providers. Similar dependency exists for Law Centres (see below) who receive about 50% of their funding from the LSC.

Citizen Advice Bureaus

There are about 550 CABs across England and Wales with about 700 outlets. These are generalist community based advice services that started in the UK in 1939. They provide all types of advice including legal advice on an as needs basis. CAB staff and volunteers can provide legal advice without a practising certificate as in the UK, whilst there are 7 reserve activities that can only be provided by a lawyer, e.g. such as a right of audience to a higher court, there is no blanket prohibition on persons other than lawyers giving legal advice as there is in Australia.

Law Centres

In contrast with the approximately 200 Community Legal Centres (“CLCs”) in Australia, there are only 63 Law Centres in England and Wales. With the first one opening in 1970, centres receive funding from both central and local government. They take a similar approach to service delivery as CLCs do in Australia, with an independent focus on community education, law reform and priority areas of need. For example, they have specialized in representing people in immigration and employment tribunals being high need areas where no or limited LSC funding is available.

Over half of Law Centres are based in London, the rest in major cities in England Wales and Ireland. Their numbers has fluctuated between 50 and 60 for quite some time, rising slightly in the 1990’s after the creation of the LSC in 1989 which heralded in a new era of expansion but now, together with legal aid firms, struggle to remain viable with the introduction of fixed fee legal aid. As of February 2008 the new director of the Federation of Law Centres will be Julie Bishop, past Executive Director of the National Association of Community Legal Centres in Australia.

Pro Bono Legal Service Providers

The key pro bono legal providers are law firms, the UK Bar Pro Bono Unit, the Free Representation Unit and LawWorks, previously known as the Solicitors Pro Bono Group which is now in its 11th year. Law students are also impressively involved in delivering pro bono services (see below).

A recent Law Society survey indicated that two thirds of solicitors in private practice have conducted pro bono work at some time in the last year. The average number of hours per year was 15 per solicitor.

The Free Representation Unit was established in 1972 and provides bar students to appear pro bono in select cases. Between it and the Bar Pro Bono Unit last year they undertook 1,000 cases.



Offices of law firm Allen & Overy during National Pro Bono Week

Law Firms

Overall I gained the impression that the level of development of structured pro bono and community service programs was at a similar stage to Australian firms perhaps with UK firms slightly more advanced in the adoption of corporate social responsibility programs. Pro bono participation rates at the ‘magic circle’ firms varies from 35% to 75% of those I met.¹⁶ Clifford Chance had 54% of lawyers recording pro bono time with an average across the London office of 27 hours per lawyer per annum. Freshfields had a 35% participation rate across the firm with lawyers in the litigation department doing most of the pro bono work. Allen & Overy has a 75% participation rate in its diverse Pro Bono and Community Affairs program.

As in Australia each firm has its own unique culture and character and has approached pro bono work from a different background and perspective. Most firms have CSR policies into which their pro bono program has been integrated (see below on CSR).

The international commercial law firm Lovells, which was the first major City law firm to set up a full time pro bono unit ten years ago, shared its wisdom by publishing for National Pro Bono Week 10 lessons from 10 years as follows:

1. Pro bono has a unique place in the provision of legal services
2. Pro bono work goes beyond human rights
3. Pro bono services should reflect the needs of the pro bono client
4. Pro bono needs to be institutional as well as individual
5. Lawyers value the opportunity of doing pro bono work
6. Pro bono clients should receive the same quality legal services as fee paying clients
7. Pro bono goes beyond what lawyers provide (i.e non-legal assistance)
8. Results, not hours are what count
9. Its not about glory, but success needs recognition
10. Lawyers and commercial clients can collaborate on pro bono projects

¹⁶ I met with pro bono coordinators from Allen & Overy, Clifford Chance and Freshfields with information also gathered from Lovells and Linklaters.

LawWorks

LawWorks was set up by big firms in 1996 primarily to provide brokerage services but has grown into a service provider that 'badges' 75 clinics provided by LawWorks, but mostly under support agreements with local solicitors. Based in London, they have recently opened a new office in Manchester. LawWorks' offices provide legal training, a legal service dedicated to not-for-profits ("NFPs") and very recently the London office engaged a full-time student projects manager to advise and assist law students and law schools to promote and support student pro bono (paid for by the Law Society). It also provides a pro bono mediation service which uses web based, telephone and face-to-face mediation services as appropriate.

LawWorks is one third funded by the LSC, one third from its law firm member's fees (based on the number of fee earners) and the rest from a range of charities including the Lotteries Commission and Vodaphone. Their members number just under 100 firms including 10 in-house legal teams and it is the members that provide the bulk of their services. 20% of its members are firms that have a US origin. It has three staff dedicated to the legal needs of NFPs which help about 450 organisations a year.

Last year LawWorks did 33,000 matters through the 75 clinics. LawWorks train approximately 600 lawyers a year, often through practical advice talks conducted regionally in a local authority. They have developed an IT system which impressively matches requests with firms and lawyers who have the skills, interest and capacity to take the matter on, thus streamlining the referral process. Requests for advice can be received by email. (For further info about this system contact Graham Bucknall at LawWorks)

Law Students

The system by which law students in the UK become practitioners seems to provide greater opportunities for student pro bono than in Australia.

The UK has many students becoming lawyers through a legal practice stream which provides opportunities and post graduation, all law students have to enter into a two year training contract to be able to be admitted to practice unlike our six month legal practice training courses.

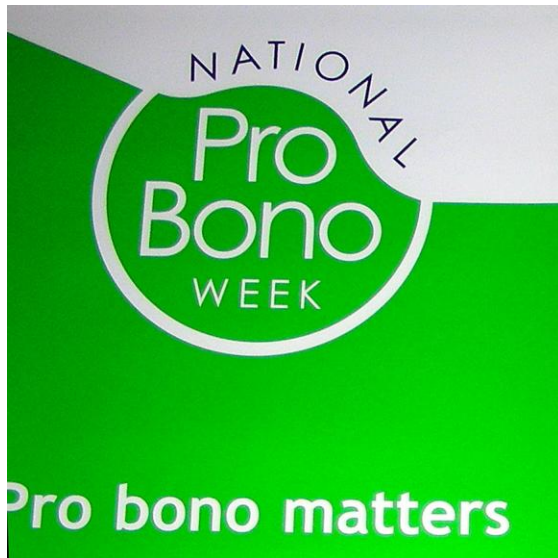
The two main legal practice course service providers are the College of Law and the BPP Law School. In the legal practice stream, students first complete a Graduate Diploma in Law ("GDL") which is a one year full time (or two year part time) course available to graduates in a non law discipline, then they must do either the Legal Practice Course or Bar Vocational Course ("BVC") for one year to graduate.

In London anything from 30-50% of legal practice students are involved in pro bono work which varies from Streetlaw activities where students present to community workers on law (immigration, housing, social security), drafting affidavits on domestic violence matters and being part of the Personal Support Unit at the London Courts of Justice (an impressive service which focuses entirely on supporting litigants in person).

The BVC requirements can be met by a pupillage with a barrister which are hard to obtain (there were 560 pupilages awarded out of 1900 applications in London last year) or through completing four 'seats' which provide the required practical legal experience. The content of the seats is regulated by the Law Society and includes litigation and conveyancing as mandatory seats. Law firm Clifford Chance had the Law Society accept that working as a free law advisor for 18 months at a community clinic would count for one seat which has made it easier for them to place graduates at community law clinics

In 2005/2006 just over half of the law schools in England and Wales were involved in some pro bono activity¹⁷ and a further 12% indicated that they intended to get involved in the next academic year (2006/2007). As in Australia some universities are leaders in Clinical Legal Education.¹⁸ However, what the UK seem to uniquely offer is a diverse and impressive range of student pro bono, much of it occurring outside of the universities and nearly all of it without academic credit.

National Pro Bono Week – Pro Bono Matters



What was most impressive about this full week of activities across England and Wales was the unified front shown by the Law Society of England and Wales, LawWorks, the Bar and the Institute of Legal Executives. This was the first joint national pro bono week but the sixth year in which National Pro Bono Week had been held.

Most prominent during the week was the Attorney-General of England and Wales, Baroness Patricia Scotland. She is the chief legal advisor to Government and succeeds Lord Goldsmith who was a strong proponent of pro bono legal

services in the UK and appointed the UK pro bono envoy, Michael Napier, partner at law firm Irwin Mitchell. The Attorney-General referred variously to pro bono as a 'movement' and a 'springboard for change'.

Another key speaker, Lord Phillips of Sudbury, stressed the central and increasingly indispensable role that lawyers must play in striving to achieve a fair society. So strong was the sense of celebration about the importance of the value and the achievement of

¹⁷ LawWorks Students Project Pro Bono – The Next Generation Published September 2006 surveyed 95 law schools in the UK.

¹⁸ E.g Northumbria University runs a Student Legal Office 'run just like an ordinary solicitor's practice'. It has sponsored student exchange visit with Monash University in Melbourne.

the profession that media coverage was positive. There was a real sense of pride and a belief that undertaking pro bono work was a fundamental and vital part of being a professional.

The aims of the week were:

- To thank those who already conduct pro bono work;
- To encourage more of the legal profession to contribute; and
- To raise public awareness of the sources of pro bono legal assistance

Key themes for the week and the conference on the final Saturday were law students, and international pro bono. 25 events took place in law schools around the country during the week and the focus of international pro bono was through an organization, to which many law firms have become members, called Advocates for International Development (“**A4ID**”) and the International Lawyers Project. (see below)

Other professionals were also included in the vision for the week, largely through the auspices of the ProHelp organization which promotes pro bono in other professions. A video introduced by HRH Prince of Wales explaining pro bono and highlighting various projects was produced for the week and shown on a number of occasions. Receptions and awards dominated events in London but the program included many service delivery events such as law students presenting to CAB volunteers on immigration laws as part of the Street Law program.

Specific issues that will be of interest to many in the Australian pro bono ‘movement’ include:

Cost recovery in successful pro bono litigation

Section 194 of the *Legal Services Act 1997* recently became law. It empowers courts to direct that if pro bono lawyers win a case, their opponents should pay the costs that they would ordinarily have charged into a charitable fund designated by the Lord Chancellor. The fund must be one that provides financial support to persons who provide or facilitate the provision of legal assistance which is free of charge.

International Pro Bono

A4ID launched in 2006, grew out of the response of city lawyers to Oxfam’s call for help at the time of the tsunami. A4ID has in the past year brokered 70 projects matching lawyers from the UK with overseas need. An open invitation for Australian firms and barristers to participate in A4ID programs was extended by Chris Marshall, Chairman of A4ID, particularly for projects in SE Asia. Contacts and more information can be found at <http://www.a4id.org/>.

The International Lawyers’ Project (run out of Clifford Chance) is currently coordinating eight of the UK’s largest law firms in the provision of training modules for developing countries.

Corporate Social Responsibility (“CSR”)

CSR has been embraced by the London ‘magic circle’ firms, some more recently than others. It is being client driven by large clients who are inquiring as to a firm’s CSR policy and activities, in some instances, down to individual solicitor/partner level.

There is a broad recognition amongst these firms of their obligation to involve themselves in their community and also that the defining characteristic of any CSR or ‘community investment’ policy is its pro bono legal work, albeit with the emphasis varying from firm to firm. Firms seem to have developed CSR policies through quite different processes; some through engaging a community activity coordinator even before having a pro bono coordinator, but then coordinating both activities structurally when introducing a CSR policy. Others have been strongly pro bono led and are only just now developing a CSR policy. All firms agreed that embracing CSR can provide a more integrated and holistic approach to their relationship with community clients.



The Royal Courts of Justice, London

Litigants in Person (LIPs)

This seems to be just as big an issue as it is in Australia. One interesting and promising approach to the issue seemed to be the Citizen Advice Bureau at the Royal Courts of Justice (“**RCJ**”) which has been operating a ‘legal casualty department’ service for LIPs for many years. It is also supported by the Personal Support Unit charity who since 2001 has provided non-legal advice, help, information and support to litigants in person at the RCJ.

As of December this year, QPILCH is starting a service in Brisbane similar to the CAB service at the RCJ.

ProHelp

Established in 1989 by Business in the Community, ProHelp is a multi-sector network of more than 1,000 professional firms who are willing to provide free advice and support to community based not-for-profit groups working for social and economic regeneration of a local area. ProHelp's members include surveyors, architects, consulting engineers, accountants, solicitors, consultants (management, property, IT), public relations, marketing and design agencies.

Member firms affiliate themselves with a local ProHelp group who identify community projects that are of real benefit to community organisations that cannot afford professional fees. Every project is researched and a project brief prepared which is then matched with member firms.

The existence of ProHelp helped National Pro Bono Week include non-legal professionals for the first time. ProHelp has affiliated organisations in Australia who the Centre will be meeting with to discuss the development of a similar body in Australia.

Definition of pro bono

Definitional issues are still alive and well in the UK and also in the US, as attested to by a number of US lawyers who were present for the conference. "The word pro bono is used to denote an exercise of skill, whether legal or not, otherwise it is referred to as volunteering or in-kind assistance" was the view of one pro bono coordinator. So non-legal staff do 'pro bono' in the UK. They just can't do pro bono legal work. Perhaps this use of language indicates a greater development of the pro bono movement amongst other professionals in the UK.

At the conference, there was some discussion about reduced fee work for large charities, with one firm indicating that they provided a 15% discount on fees and then saying "we don't do pro bono work on things we could do by charging". The UK Pro Bono Protocol, which many UK lawyers have endorsed, defines pro bono work as being done free of charge.

At the conference there was concern expressed that a league of tables for UK based firms may emerge and a consensus that, if that does happen, the publisher should not determine the definition of pro bono used. The consensus was that any definition should focus more on the 'public good' than the free aspect of *pro bono publico*. The US participants noted that they were still struggling with the definition after many years and contrasted the broad and inclusive definition used in the ABA model rules with the narrow definition used in Pro Bono Institute Law Firm Pro Bono Challenge SM that is followed by most larger firms.

In another conference session, a straw poll on whether an aspirational pro bono target should be introduced in the UK drew a greater than 50% supportive response from those present.

Pro Bono UK.net

The issue of better coordination was a key theme of the week. The Attorney-General's Pro Bono Committee established in 2001 has created a dedicated national website at www.probono.uk.net.

This site has had much additional content added to it since its inception in 2004 and will continue to be a focal point for the growth of pro bono in the UK.

The London Legal Support Trust (“LLST”) and Sponsored Walk

This trust now in its third year has been successful in providing a private fund which financially supports the delivery of pro bono legal services in Greater London, mainly by supporting the community agencies who refer and provide pro bono legal services.

The main event that raises funds for the trust is the annual London Legal Sponsored Walk, a charity walk where lawyers walk 10km from the Royal Courts of Justice to the Law Society in Chancery Lane. Each lawyer is responsible for attracting their own pledges and many law firms agree to match their lawyers \$ for \$ with money they raise. Lawyers can provide 50% of the money raised to a charity of their choice but the rest goes to the LLST. The event has been well attended by lawyers (nearly 2000 last year) and supported by firms and every year has significantly increased its annual income.



The Centre would be interested to hear from anyone who thinks a similar event could be organized in Australia, particularly to help financially support the PILCHs on a state by state basis in Australia. The appeal for law firms would be that it may broaden the sources of funding for PILCHs and soften the emphasis on the ‘per fee earner’ formula that now underpins PILCH funding.

Mr Bob Nightingale, Chairman of the LLST, who was awarded an MBE for his work in supporting CABs and law centres in south east London, is keen to see the idea be taken up in other jurisdictions with a view to lawyers walking in various cities of the world on the same day (next walk in London is on 29 May 2008).

Of particular interest has been the recent donation to the LLST from Allen and Overy of the interest from their lawyers’ trust accounts (“IOLTA”). They have extended an invitation for other firms to follow suit but none have yet. Unlike the US and Australia,

there is no statutory requirement to pass IOLTA monies on to government or a public purpose fund.

Quotable Quotes from National Pro Bono Week

The legal profession is full of people with a very clear and very public spirited vision of the future. And that future is about giving and giving back. And I am very very proud of what the legal profession does, and this is my chance to thank you.

Attorney-General Baroness Patricia Scotland

We in the pro bono movement are fond of saying that pro bono is “part of being a lawyer”. I want you to do something for me and remember this all your careers.

Attorney-General Baroness Patricia Scotland when addressing a group of law students

The greatest lesson is that pro bono is about the strength of the relationships that are built between the lawyers and their clients. The pro bono clients appreciate the lengths that the firm and its lawyers are prepared to go on their behalf and the lawyers enjoy the challenges of work that can often be a long way from what they do for their other clients.

From Lovells’ report for National Pro Bono Week, ‘10 lessons from 10 years’

I would like going forward to see a commitment to pro bono and community affairs as the default position of each person on the Clifford Chance payroll. I do not believe you are a fully formed lawyer performing at the top of your game if you are concentrating exclusively on the next billable hour.

Michael Smyth, Pro bono partner, Clifford Chance

γνῶθι σεαυτον, the inscription engraved above the portico of the Temple of Apollo at Delphi, is a useful precept for a would be pro bono lawyer. It means “Know thyself”, or “Stick to what you’re good at”. There are now plenty of opportunities for everyone so long as people’s needs can be linked to the capacity to meet their needs.

Sir Henry Brooke, Barrister and Patron of the Free Representation Unit on the occasion of the second annual Nottingham Law School pro bono lecture

On the relationship between pro bono and legal aid

I can understand people’s misunderstanding that there is a tension between legal aid and pro bono, which could arise if either one trespassed on the other’s territory. But it is hard to see how that can happen as pro bono is, by definition, meeting unmet legal need.

Mike Napier, Partner Irwin Mitchell and the A-G’s pro bono envoy

[Pro bono] cannot in a million years touch the quantity of work that legal aid funds. It’s like a league of friends of a hospital or a parent teachers association – it adds extra bits but it doesn’t affect the core funding.

Bob Nightingale MBE, Chair London Legal Support Trust

There is no question of City firms stepping in to fill any gaps in legal aid. They don't want to give the Government any comfort or any signal that they are going to pick up the pieces – and the Government needs to hear that message because they are taking a huge risk with system and there is nobody there to pick up the slack.'

Andrew Holroyd, President, Law Society of England and Wales

As voluntary legal agencies are losing funding and are struggling to provide services, there is increasing pressure on us to fill that gap while constantly speaking to the powers that be that this should be provided publicly rather than through law firms. But the reality is that you can't walk away from a law centre that is struggling to provide more services to vulnerable people because you are trying to maintain that line.

Shankari Chandran, Pro Bono and Community Affairs Manager, Allen & Overy



Front door of Justice UK, a long standing independent law reform and human rights organisation that have just published "A British Bill of Rights – Informing the debate".

Sydney
13 December 2007