

The COMBAR Commercial Court and London Circuit Commercial Court Pro Bono Scheme

Q&A FOR PARTICIPANTS

Thank you for volunteering. Those thanks come from the Judge in Charge of the Commercial Court, from the Judge in Charge of the London Circuit Commercial Court (**LCCC**), from COMBAR, and from Advocate.

In addition to this note, please make sure that you read:

- the Protocol; and
- the Explanatory Note provided to respondents to applications issued in the Commercial Court and in the LCCC who are individuals and are not known to be represented.

These documents will be available on the COMBAR/Advocate websites.

What does the Scheme do?

The aim of the Scheme is to provide pro-bono assistance and representation for litigants in person (**LIPs**) appearing in applications to be heard in the Commercial Court or the LCCC with a time estimate of one day or less. The Scheme is open to all barristers (self-employed or employed) who have post-pupillage commercial experience and are members of COMBAR, and who have indicated their willingness to make themselves available to represent LIPs at short notice in applications covered by the Scheme (**Volunteer Advocates**).

How does the Scheme Work?

Volunteers sign up for the scheme by asking to be added to the mailing list of Volunteer Advocates (the **Volunteer Mailing List**). The Volunteer Mailing List is compiled and updated by COMBAR.

After Advocate has been contacted by a LIP seeking assistance, and provided that Advocate confirms that the LIP qualifies for assistance (which is means-tested), a short summary of the application (prepared by a member of COMBAR) will be circulated to the Volunteer Mailing List. Volunteer Advocates should respond by return, indicating their willingness to act for the LIP. Cases will be allocated on a 'first come first served' basis (unless the hearing relates to a case in which a Volunteer Advocate has previously been instructed under the Scheme, in which case that Volunteer Advocate will be given first refusal).

Who decides whether it is appropriate for me to provide assistance?

Cases are allocated on a 'first come first served' basis. You must decide for yourself whether it is appropriate for you to volunteer for the particular matters circulated to you, having regard to your availability and your experience.

If you have been instructed, your instruction constitutes a professional commitment, and must be treated as such. You should only cease to act and return instructions in the circumstances provided for in the BSB Code of Conduct, and in such circumstances the you should inform Advocate as soon as possible that you are unable to act.

If instructed, who decides what assistance I should provide?

Once you have undertaken an instruction, your responsibilities will be the same as for preparing for any application, save that the instruction will be undertaken on a pro-bono basis. You will remain subject to the usual obligations as to the filing of skeleton arguments as set out in the Commercial Court Guide/Circuit Commercial Court Guide (although Judges will have regard to the fact that you may not necessarily have had sufficient time to prepare and will make allowances for that fact).

Your obligations will be limited to the hearing in question. While you may agree to assist with the consequential matters arising from the hearing (for example, agreeing the terms of the draft Order), you are not obliged to do so.

What should I do to prepare?

Please read the Protocol and the Explanatory Note in order to inform yourself about the Scheme.

It is the LIP's responsibility to ensure that a copy of the application bundle and any other relevant papers are provided to Advocate in sufficient time before any hearing. If you have agreed to take on the case, Advocate will arrange to have the papers provided by the LIP sent to you at your Chambers.

From whom will I take instructions?

You will be responsible for taking instructions directly from the LIP.

When representing a LIP it is for you to decide what assistance you are able to offer, having regard to your professional obligations. For example:

- You may wish to consider whether it is appropriate for the LIP to represent themselves in respect of part of a hearing (for example, if you have been unable to obtain proper instructions from the LIP).
- If you consider one of the points relied upon by the LIP to be hopeless or one that you consider may not properly be advanced, you should inform the unrepresented person that you are prepared to make only part (rather than all) of the argument and why. If the LIP insists that the point is advanced, you should say that he or she will have to advance that point him- or herself, and you should ask the Court to hear both you and the unrepresented person, on the basis that you will make part of the argument and the unrepresented person will make the remainder of the argument.

What about insurance?

Volunteer Advocates must either be (a) tenants at a set of chambers (or practising on their own account) with insurance cover under the Bar Mutual Insurance scheme, or (b) employed, in which case they can participate with the benefit of Advocate's insurance. In the former case, they will appear under the licensed access auspices of Advocate, and are therefore covered by the Bar Mutual Insurance scheme. Either way, they must be members of COMBAR.

What about costs?

In appropriate circumstances, you may be able to secure a pro bono costs order under s. 194 of the Legal Service Act 2007 and CPR 46.7. Information about this can be found at www.ATJF.org.uk. Although a written statement of costs is usually required, the requirement for a written statement is in a

Practice Direction (and is not a Rule). You could inform the Court orally of the time you have spent and your hourly rate (or if you consider the case could have been handled by someone significantly junior to you, suggest an appropriate hourly rate).

What should I do at the end of a case?

At the end of a day's work for an unrepresented party, you must complete a Concluding Letter (a template for which will be provided), which will summarise what happened and what needs to happen. A copy of the Concluding Letter should be emailed to Advocate as soon as possible after the hearing (preferably on the day that the hearing took place). Advocate will email a copy of the letter to the LIP.

As noted above, the assistance provided by you under the Scheme should be limited to the conduct of the relevant hearing (plus, if you are willing, any consequential matters such as the drawing up of orders). If the LIP wishes to have assistance in relation to further aspects of the case (including subsequent hearings that may fall within the scope of this Scheme), they should contact Advocate. You may indicate in the Concluding Letter whether, should the case come back for a further hearing that falls within this Scheme, you would wish to have first refusal.

What if the unrepresented person or the other party has a "McKenzie Friend" who wishes to speak in court?

Litigants have the right to have reasonable assistance from a layperson ("McKenzie Friend") to i) provide moral support; ii) take notes; iii) help with case papers; iv) quietly give advice on any aspect of the conduct of the case.

A McKenzie Friend may not: i) act as the litigant's agent in relation to the proceedings; ii) manage litigants' cases outside court, for example by signing court documents; or iii) address the court, make oral submissions or examine witnesses.

The court may grant a right of audience to a McKenzie friend on a case-by-case basis, but the relevant guidance (Practice Guidance (McKenzie Friends: Civil and Family Courts) [2010] 1 W.L.R. 1881) states:

"Courts should be slow to grant any application from a litigant for a right of audience or a right to conduct litigation to any lay person, including a McKenzie friend. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the court. These requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice."

The LIP may find the court is unwilling to grant their McKenzie Friend permission to address the court if they are represented by a Volunteer Advocate.

As a barrister, am I entitled to act alone, without a solicitor?

Barristers are entitled to act alone, without a solicitor, because they are acting under the auspices of Advocate, which has a special licence.

Or what if the matter is of a complexity or nature that more assistance is needed?

It is for you to determine for yourself whether it is appropriate for you to volunteer, having regard to the complexity of the matter and your experience. You should never act in circumstances or to an extent where your own competence will be exceeded

Where the matter is of a complexity or nature that the assistance of a solicitor as well as the barrister is necessary, you are not required to appear (although you may consider whether an application for an adjournment to enable the unrepresented person to take further advice is appropriate) and the unrepresented person should be referred to Advocate for further assistance.