**Pro bono in the UK and US:**

**A legal and institutional comparison**

Ian Browne[[1]](#footnote-1)

**Introduction**

For those of us who wish to encourage the development, efficiency and availability of pro bono legal support within our own jurisdiction, its practice in other countries offers a valuable source of inspiration and information. By seeking a better understanding of how pro bono works abroad, we can adapt or adopt ideas that may help to provide better access to justice at home. However, to do this effectively, we must first develop an understanding of how and why pro bono culture differs between countries and legal systems.

The reasons why pro bono practice varies from country to country are undoubtedly numerous and complex. Amongst other factors, at the very least we must take into account the wider legal systems involved, the differing levels and forms of public funding, relative legal needs, the adversarial or inquisitorial conduct of litigation, local culture, professional ethics and the structure of relevant institutions. It is therefore difficult to know precisely where to begin when enquiring as to why one jurisdiction might have a more developed pro bono culture than the next, or how lawyers in one country might try to emulate the participation rates of lawyers in another. However, in seeking to understand the reasons for different rates of participation between countries, it is important that we do not rush to the simple explanation of merely differing ‘culture’ or ‘tradition’. Certainly, the established practice of peers and colleagues will inform a lawyer’s own actions, but culture does not develop independently of its environment and so we must also pay heed to the legal systems in which lawyers work and the institutions that help or hinder them.

In choosing to conduct a comparative study of pro bono practice in the United Kingdom and United States, I benefit from working with two jurisdictions that have a number of common characteristics.[[2]](#footnote-2) They are the two largest legal markets in the world,[[3]](#footnote-3) have similar numbers of lawyers per capita, are similarly litigious[[4]](#footnote-4) and have similar legal systems with roots in the English common law. However, despite these similarities, they have considerably different rates of pro bono participation, with US lawyers undertaking roughly three times the amount of pro bono work that UK lawyers do.[[5]](#footnote-5)

Pro bono practice in the US is more advanced than anywhere else in the world. By total hours performed, percentage participation rates or impact, American lawyers have a greater focus on pro bono work than their counterparts in any other jurisdiction.[[6]](#footnote-6) For this reason, the US is often looked to by lawyers across the world as the gold standard for pro bono work and practice.[[7]](#footnote-7) The UK, especially in the English and Welsh jurisdiction[[8]](#footnote-8), while rating relatively highly by international standards[[9]](#footnote-9), is some way off the bar set by the US.

In this paper, I will begin by briefly discussing the markers which could show the cultural attitude towards pro bono work in each country, as well as volunteering and philanthropy more generally, before moving on to highlight several issues which I believe to be important in understanding the different rates of pro bono practice between the two countries. These issues are differing legal education systems, the structure of each country’s legal profession, the rules for cost recovery and the different structure of publically funded legal work. I do not mean to suggest that the factors offer an exhaustive explanation, nor am I arguing that the UK would necessarily benefit from imitating those features of the US system which encourage pro bono. I do, however, hope to offer a better understanding of how and why the US system encourages pro bono work in the way it does. Given the way in which pro bono practitioners in the UK and elsewhere seek inspiration from the US, it is vital that we apply the appropriate lens when we look for that inspiration, lest we misapply ideas that find their success in America only as a result of their roots in a particular institutional landscape.

**Definitions**

As is often cited, the term ‘pro bono’ comes from the Latin *pro bono publico,* meaning ‘for the public good’, and is an established, if hard to precisely define, part of legal professional ethics. The UK’s LawWorks has a two-part definition:

“1.1. When we refer to Pro Bono Legal Work we mean legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public and alternative means of funding are not available.

1.2. Legal work is Pro Bono Legal Work only if it is free to the client, without payment to the lawyer or law firm (regardless of the outcome) and provided voluntarily either by the lawyer or his or her firm.”[[10]](#footnote-10)

While certainly workable, I don’t believe this has much to say about the pro bono work that students provide, nor is it helpful in view of the fact that many lawyers, at least at corporate firms with internally recognised pro bono programmes, are technically paid to carry out pro bono work, even if that is not the basis of their employment. In contrast, the US’s Pro Bono Institute offers a 31-page guide to help those firms which have committed to one of their ‘Pro Bono Challenges’ to distinguish exactly what does and does not qualify as pro bono work.[[11]](#footnote-11)

Not being able to formulate a better definition of pro bono myself, I will be deliberately expansive in my use of the term and will use to it to cover legal work performed for an individual or organisation who might otherwise not be able to access assistance, whether completely voluntarily, for academic credit or even as part of someone’s paid employment, provided that it is part of a public interest programme alongside their usual role. I will not include the work done by the employees of publicly or philanthropically funded bodies, although the way in which these organisations interact with pro bono lawyers is certainly an important consideration and will be discussed in the section on public funding.

**Volunteering and Philanthropic Culture**

Although not the main focus of this paper, it is worth noting the wider cultural attitude of each country towards volunteering and philanthropy and whether it may contribute to the practice of pro bono within the legal profession. Although it is difficult to get accurate figures, it seems that regular individual giving is similar in the US (63%) compared to the UK (69%),[[12]](#footnote-12) although Americans give a much higher amount measured as a percentage of GDP.[[13]](#footnote-13) It also seems to be the case that more people regularly volunteer in the US (46%) than do in the UK (33%).[[14]](#footnote-14)

Despite the discrepancies in wider volunteering and giving rates, they cannot alone account for the substantially different engagement in pro bono work. As I mentioned previously, the US has considerably higher rates of pro bono than the UK or, for that matter, anywhere else. A recent survey showed that lawyers working in the US contributed an average of 72.9 hours of pro bono work in 2016, with 72% of lawyers undertaking at least 10 hours.[[15]](#footnote-15) By contrast, the average amounts of hours contributed during 2016 in the UK was just 22.5, and only 27.6% of lawyers conducted more than 10 hours.[[16]](#footnote-16) Interestingly, the figures for the UK are bolstered by the UK offices of US-based law firms, which tend to produce higher rates than equivalent UK-native firms.[[17]](#footnote-17)

The popularity of pro bono work among lawyers in the US is disproportionately higher than the popularity of volunteering among the public at large confirms that pro bono is a distinct phenomenon with the legal profession and not merely representative of a wider cultural trend. The idea that pro bono work being something which is integral to the professional identity of lawyers within the US is further highlighted by the inclusion into the American Bar Association’s Model Rules of Professional Conduct of Rule 6.1, which states that “every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.”[[18]](#footnote-18) The rule as it stands has been in place since 1995 and represents the latest stage in the increasing codification of a public service obligation within the professional ethics of American lawyers.[[19]](#footnote-19) While the courts in the UK have in the past had powers to require that a lawyer assist an unrepresented indigent litigant,[[20]](#footnote-20) there has never been an equivalent requirement within their professional obligations for UK lawyers to undertake pro bono work.[[21]](#footnote-21)

It is worth remembering that the greater popularity of pro bono and its more formal recognition within the US are the starting point for this paper enquiry rather than the answer. While they may be self-reinforcing norms, they are also symptoms of a wider cultural, institutional and legal landscape. This paper will now go on to consider several factors which might have resulted in pro bono being such a developed feature within the US legal community.

**Legal Education**

The educational experience is a formative part of a lawyer’s career. It will often provide the first in-depth interaction a student has with the legal system and the legal profession more generally. Comparing the differing experiences of UK and US law students therefore provides an opportunity to examine how even at an early stage, the institutional and regulatory landscape of the two countries can have an effect on pro bono participation.

The most immediate contrast is the basic structure of the two counties’ legal education systems. Law is not taught as an undergraduate degree in the US and the overwhelming majority of American lawyers enter the profession by first studying for a four-year academic undergraduate degree in a non-law subject and then completing a three-year Juris Doctor (JD) professional graduate degree, often with several years of work experience in-between. To qualify to practice as a lawyer, it is usually then necessary to pass the bar exam of the relevant State – often with the assistance of courses or study materials from third-party providers.

The UK, on the other hand, has a more established tradition of separating out the academic and vocational study of the law. In most circumstances,[[22]](#footnote-22) an academic component is completed first; either a three or four-year law degree (LLB) at undergraduate level, or, if a different subject is studied at undergraduate, a one-year Graduate Diploma in Law (GDL). After this first academic stage is complete, a one-year vocational course is undertaken. This is either a Legal Practice Course (LPC), for those who are to go on to practice as solicitors or a Bar Professional Training Course (BPTC), for would-be barristers.[[23]](#footnote-23) Finally comes a period of on-the-job training before qualification is complete; either a two-year ‘training contract’ for solicitors or a one-year ‘pupillage’ for barristers.[[24]](#footnote-24)

These different approaches to legal education have a number of knock-on effects for the practice of pro bono by students. First, given that the JD comprises virtually the entirety of a student’s legal education prior to practice, American law schools necessarily have a greater general obligation to provide training in a much wider array of legal and professional skills than does any individual course within the UK system. The opportunity to expose students to social justice issues and to provide hands-on experience has meant that, particularly since the 1970s, US law schools have offered an increasing amount of clinical legal education within their JD programmes; i.e. classes which provide assistance to in-need communities while still counting towards course requirements.[[25]](#footnote-25)

The greater focus on this form of legal education has continued and in 2015, the American Bar Association moved from merely requiring that their accredited law schools offer opportunities for practical learning to mandating that all JD students now complete at least six credit hours of experiential learning.[[26]](#footnote-26) Although this can be through a simulation course as well as a law clinic or a field placement, it nevertheless encourages American law schools to provide a considerable variety of opportunities for students to gain experience by giving legal assistance to those in need. Some law students may have even greater obligations in regards to pro bono; some law schools have targets for pro bono work[[27]](#footnote-27) while others have strict graduation requirements.[[28]](#footnote-28) The New York State Bar has gone one step further and since 2015 has required everyone wishing to be admitted to have completed 50 hours of pro bono work.[[29]](#footnote-29)

In comparison, clinical legal education is rarer within the UK, particularly at undergraduate level. There could be a number of different reasons for this. The first is the personal profile of the students involved; most of those who begin an LLB in law do so at the age of 18 or 19 and so are relatively young compared to the typical student in the US, where the median age for applicants to law school is around 24.[[30]](#footnote-30) Notwithstanding the valuable contribution made by many students in the UK,[[31]](#footnote-31) this relative lack of maturity is surely restricting when it comes to offering a service to members of the public who might often be vulnerable. Another issue is the continuing focus on the classroom, rather than clinical, study of law during the undergraduate degree. Clinical legal education has been slower to take off in the UK generally and even now that the majority of UK law schools have set up clinics, the assistance provided by students is most often done as an extracurricular activity and is unassessed.[[32]](#footnote-32) Options for structured pro bono are even more limited for those students who opt to take a GDL rather than an undergraduate law degree, as the course’s compressed structure does not give room for the kind of optional clinical modules that the LLB allows.[[33]](#footnote-33) The two common vocational courses, the LPC and the BPTC offer greater flexibility and are increasingly seeing the integration of pro bono work within their curriculum.[[34]](#footnote-34) Another concern is that as the GDL, LPC and BPTC are all typically taken as full time one-year courses, the turnover of students in the institutions that offer them restricts the opportunities for student-led extracurricular pro bono projects that are common in a lot of US law schools.[[35]](#footnote-35)

The other important consideration regarding the UK legal education system is the very fact of its segmented nature. As mentioned above, the route to qualification will usually involve academic schooling, vocational schooling and then a training period in the workplace. Given that this structure assures that a lawyer cannot become fully qualified without having a reasonably large amount of practical experience, it is perhaps understandable that there is less onus on experiential learning during the academic and vocational stages. That being said, the competitive nature of getting the training contracts or pupillages necessary to qualify as a lawyer means that many students are forced to build their resume with pro bono work before they are able to secure paid work. A recent report by representative body Young Legal Aid Lawyers suggested that 75% of its members had taken unpaid work experience, although not even necessarily for pro bono organisations.[[36]](#footnote-36)

The greater tradition of, and perhaps even capacity for, clinical legal education in the US is clear. Taking part in a legal clinic, either in an assessed or extracurricular capacity, offers an opportunity not only to provide a valuable service to clients but also to instil a pro bono ethic at a formative period in a law student’s career. Anecdotally, when I visited several pro bono organisations in the summer of 2017, I heard that some volunteers would first get involved with certain projects as students and then continue to assist with them many years into their professional careers.

Given the specifics of the route toward qualification for UK lawyers, it seems likely that while the legal education system here continues as it is, it will never be as amenable to pro bono work. However, it would seem that the trend towards clinical legal education is a positive one as far as it encourages wider pro bono participation in future lawyers. Given that many students are finding it difficult to enter the work force without some form of work experience, there is even more reason to encourage law schools to provide structured opportunities for students to begin their careers with a public service ethic.

**Professions**

The legal profession in the UK differs from that of the US in a fundamental way, in that it is actually divided into separate professions – solicitors and barristers.[[37]](#footnote-37) This separation has a number of historical roots but can be somewhat simplified: since the 1300s, the legal profession in the UK has been divided, with barristers, who would argue the technical points of law in a case, and attorneys (and later ‘solicitors’) who would more generally represent their client’s interests. For much of the profession’s history, barristers have had a monopoly on advocacy before the courts, while solicitors would have the responsibility of dealing directly with clients, producing and submitting case filings and other activities involved in the conduct of litigation outside the courtroom.[[38]](#footnote-38)

Contentious matters, i.e. those between two or more parties who disagree on a legal issue, will typically be handled from the outset by a solicitor who will then ‘instruct’ a barrister, often referred to as ‘counsel’, to plead their client’s case in front of a court or tribunal.[[39]](#footnote-39) Depending on the kind of case and the relationship between the barrister and the solicitor, the barrister may also be involved in the drafting of the written grounds and other pre-trial materials or correspondence. Complex cases may involve a team of barristers led by a Queen’s Counsel (QC) also known as a ‘silk’, an honorific title reserved for particularly distinguished and experienced advocates.[[40]](#footnote-40) Although a small but increasing number of practising barristers are employed by law firms or other institutions, the vast majority work individually and are self-employed. Most will be members of a set of ‘chambers’ with other barristers where, in exchange for tenancy fees, they will gain access to shared resources, including clerks; a distinct profession which caters to the administrative and business needs of barristers.[[41]](#footnote-41)

The division between the professions is formalised through the restrictions imposed on each. As mentioned above, a solicitor does not have the required ‘rights of audience’ to appear before most courts and argue a case before a judge. A barrister cannot typically be hired directly by a lay client. Both of these restrictions can be avoided with additional qualifications,[[42]](#footnote-42) but beyond a number of specific instances such as criminal defence, the distinction remains the norm.[[43]](#footnote-43) The two different vocational courses required to qualify as either barrister or solicitor, the BPTC and the LPC respectively, give different focus to oral advocacy training and the simple course of professional experience throughout a career will mean that even if the formal restrictions on each profession were abolished, many practicing lawyers would be ill-equipped to take on both aspects of litigation. This separation between solicitors and barristers colours the practice of litigation, both for commercial and pro bono clients, in a number of important ways.

The first is the very issue of the divide itself. Although settlement before or during trial is common in many legal disputes, the fullest expression of litigation typically includes a hearing before a court and therefore requires the involvement of both a solicitor and a barrister. This necessarily means that no matter how willing a solicitor is to take on a pro bono matter, unless they also have the agreement of a barrister (who will almost certainly not work for the same organisation), they may be unable to guarantee the client full representation if the matter goes before a court. Without this guarantee from the outset, a pro bono client has to take the risk that either: their pro bono solicitor can persuade a barrister to take on the case at a point closer to trial, the client can find a barrister themselves, they can gather enough money to pay for a barrister, or the case settles before trial. If the client fails to find a barrister in time for hearing, they may well have scuppered their case and incurred costs in the process.[[44]](#footnote-44)

The added difficulty of finding two lawyers, or sets of lawyers, that are willing to act pro bono for a client is compounded by the further practical restrictions which barristers face. The starkest of these is that, as barristers are self-employed, any decision to take a case on pro bono will likely have a direct negative impact on their earnings. Although preparation work can be done flexibly, court appearances will necessarily be heard during a limited period in which a lawyer could be taking on paid work.

Lawyers working in law firms, either in the UK or US, who do pro bono work supported by their employer can do so without being personally penalised. In fact, increasingly large law firms are allowing for their lawyers to offset, up to a limit, their pro bono work against their target billable hours.[[45]](#footnote-45) There is a trend in large commercial law firms of moving towards models with dedicated pro bono managers and structured projects, however it is difficult to see how this would ever work for barristers’ chambers.[[46]](#footnote-46) While some chambers do run grant-giving charities or have structured pro bono project partnerships, they do not have the same corporate social responsibility-induced incentives to offer pro bono support in the same way that larger law firms do.[[47]](#footnote-47) Nor, given the self-employed nature of barristers and the fact that they have to pay a part of their earnings to their chambers as tenancy fees, is it as likely that they will want to see those fees used to fund professional pro bono coordinators or more extensive projects.

All this is not to say that barristers do not conduct any pro bono work; figures from a survey in 2013 suggested that 39% percent of barristers had conducted at least some pro bono work,[[48]](#footnote-48) but given that another source suggests that a lot of this may just be informally provided for by solicitors they have existing relationships with,[[49]](#footnote-49) it is hard to know exactly how effective this is and whether it results in cases being taken that otherwise wouldn’t be or whether it was a favour used to keep a solicitor client happy. Although the distinction is not measured in most surveys, taking a case on an entirely pro bono basis and doing extra work on an existing case free of charge has a very different effect on access to justice. A more formal structure for doing pro bono as a barrister is provided by the work of the Bar Pro Bono Unit, a national charity based in London. However, despite significant recent development, the Unit facilitates only around 850 cases a year[[50]](#footnote-50) across over 16,000 practicing barristers.[[51]](#footnote-51)

I should at this point mention that the restriction on advocacy for solicitors is not absolute. As noted previously, it is possible for solicitors to gain the right to appear before the higher courts. However, this is most often in the context of criminal work where, due to the fact that legal aid is relatively readily available and the clients are perhaps the least sympathetic, very little pro bono work is done. To briefly sketch the court system of England and Wales:[[52]](#footnote-52) serious criminal cases are brought in the Crown Court, most civil cases are brought in the County Court and administrative cases (i.e. those which challenge the decisions of public bodies) or high value civil cases are heard in the High Court. Decisions from each of these can be appealed to either the Court of Appeal or the Supreme Court.[[53]](#footnote-53) You must have higher rights of audience (i.e. be a barrister or a solicitor-advocate) to appear before each of these courts aside from the County Court. While solicitors are able to appear before the Country Court, depending on the kind of case it may be usual that a barrister will be instructed.

However, alongside the more traditional courts, there are also a number of tribunals which each hear cases on specific areas of law. The restrictions on who may appear before these tribunals vary from one to another, but two of the most widely used, the Employment Tribunal and the Social Security and Child Support Tribunal, allow anyone to represent parties. This removes some of the traditional limitations on pro bono casework as it allows solicitors, and even students, to take on a pro bono matter from start to finish without the additional need to arrange for a barrister. Indeed, some of the UK’s most successful pro bono projects, such as the Free Representation Unit, are situated in tribunals that allow the greatest number of people to act as representatives.

Unlike in the UK, the legal profession in the US is unified and has no formal distinction between those who do and do not conduct oral advocacy before a judge. Lawyers are restricted in appearing before a court only if they are not admitted to the state bar or to that particular federal court. While certain lawyers, particularly those in larger firms, might specialised as ‘trial lawyers’, there is no formal division within the profession and so one lawyer may well handle every stage of a piece of litigation.

However, it can be difficult for junior lawyers to get the kind of experience they need to gain the skills to become a proficient trial lawyers. Law students in the US are not required to learn advocacy as part of the curriculum nor are they assessed through oral examinations to the same extent as those in the UK.[[54]](#footnote-54) The difficulty in getting courtroom experience is exacerbated by the fact that only an estimated 2% of civil cases in the US go to trial.[[55]](#footnote-55) This can be a particular problem for junior associates at large law firms, who are unlikely to be trusted with the kind of high-value commercial cases that might be typical of the firm’s practice. Pro bono work, at both student and professional levels, offers a valuable opportunity for young lawyers who want to pursue a career involving in court advocacy to overcome these hurdles.

While conducting pro bono work across the divided profession in the UK is by no means impossible, there are undoubtedly a number of factors which make it more difficult than in the US. Despite the slight blurring of the boundaries between barrister and solicitor, and regular arguments that the split in the professions should be done away with completely,[[56]](#footnote-56) the restrictions on each remain and are likely to do so for some time. If pro bono is to be encouraged in the UK, we must take into account these restrictions and develop methods and models which overcome them.

**Cost recovery**

The next fact to consider relates not directly to the lawyers involved in a case but to the principles relating to the distribution of lawyers’ fees after the conclusion of litigation. The two differing approaches taken by the US and UK on how to apportion the costs of litigation are known respectively as the American Rule and the English Rule.

The American rule is quite simple: each side is responsible for paying for their own lawyers. There are some exceptions to this which might mean that you are also ordered to pay the fees for the opposing side’s lawyers: if, for example, one party acts in contempt of court, or in bad faith or, importantly, if a particular statue designates that “costs shifting” is to be applied within a certain kind of claim.[[57]](#footnote-57) These are often statutes which allow for public interest litigation (such as the Truth in Lending Act 1968, the Voting Rights Act 1976, the Federal Mine Safety and Health Act of 1977) and cover issues that the government wants to incentivise litigation in order to help police the relevant issue.[[58]](#footnote-58)

From a pro bono perspective, the American Rule makes things relatively simple. If a client has secured a lawyer who is willing to represent them pro bono, they can proceed with their legal claim knowing that if they lose, they will almost certainly not have to pay any legal fees. They have little to lose, perhaps other than the possibility of counter-suit or of antagonising an opposing party. For the most part, when costs shifting is in operation during public interest litigation, its effects are limited to one direction; from defendant to claimant. An example of this might be in a case where a local resident sues a neighbouring factory for polluting a water supply; if the resident wins the case, the factory would have to pay their fees, but if they lose, they are not forced to cover the costs of the factory’s lawyers. This rule allows some private law firms to run a profit-making business from this kind of litigation and also means that claimants do not have to face the risks of substantial costs for trying to achieve a public good.

In comparison, the system in place in the UK provides a number of disincentives for pro bono litigation. The English Rule, which is not just followed in England but also the majority of countries in the world,[[59]](#footnote-59) offers the maxim that “costs follow the event”, which in everyday English means that the loser pays the costs of litigation, including the fees of the lawyers. This rule is followed in most of the UK’s courts; after a case is decided, the winning party will draw up a bill of costs for the opposing party to pay. If the other side claim that the costs are not reasonable, they can argue them down, often through a second round of litigation. This system is further complicated by a number of statutory schemes which can limit the recovery of costs[[60]](#footnote-60) and has led to the development of a specific practice area of costs lawyering.

In practice, the English Rule means that in most forms of litigation, if a party loses a case, they can expect to have to pay. There are several reasons why this might be a good idea overall; it could be argued that justice requires that the party who was in the wrong might have to pay the costs incurred by the injured party while obtaining a remedy. There is some debate as to whether the American Rule or the English Rule better ensures efficient and fair litigation, but the risk of having to pay if you lose might well dissuade meritless litigation. However, given the inherent uncertainly of outcome when beginning litigation, it also means that by initiating any legal proceedings, you are taking on what could be an expensive risk. For pro bono clients, this means that even if they manage to convince a lawyer to act for them for free, by bringing a case they open themselves up to the risk of a large bill if things do not turn out as planned. Given that many recipients of pro bono support are poor or in a precarious financial situation, it can perhaps be expected that this risk dissuades litigation even when pro bono lawyers might otherwise be willing to act.

In some instances, this threat of cost recovery is even more of an issue because it is asymmetric. By this I mean that if an opposing party realises that the claimant’s lawyers are acting pro bono and therefore they do not run the same risk of having to pay out lawyer’s fees if they lose (as there aren’t any), they may be incentivised to extend litigation rather than settle. That being said, Section 194 of the Legal Services Act 2007 now allows for pro bono costs orders, which award an amount as if fees were paid, but it has to be passed to a charity and applications are rarely made.[[61]](#footnote-61)

Importantly, when a case is being funded by the Legal Aid Agency, the agency is liable for the costs rather than the client.[[62]](#footnote-62) There are also exceptions to the general rule that the losing party pays the costs, mainly within the tribunal system as well as in some specialist courts such as the Family Court.[[63]](#footnote-63) These courts and tribunals are designed to be used by lay people and so have considerably lesser risks associated with litigation and more relaxed procedural rules (including fewer requirements in regards to rights of audience, as discussed above).[[64]](#footnote-64) Unless you behave in a vexatious or unreasonable manner, it is very unlikely you will have a costs order made against you in these circumstances and so the risks of litigating are lessned.

The additional risk of having to pay the cost of the opposing side’s lawyers is a disincentive for any potential litigant. For the kind of litigant who might be the recipient of pro bono legal support on account of their limited financial resources, this risk is sure to be a factor in deciding whether to take a case forward, as it would be rare to find a case that has a one hundred percent certainty of success. Without the indemnification that the UK’s Legal Aid Agency provides, poor litigants can only engage in many forms of litigation by taking on prohibitive financial risks, even with the pro bono assistance of a lawyer. In some ways, this can be better understood as a limitation on the number of cases which are appropriate for pro bono support, rather than a restriction in the ability to provide pro bono support itself. Those instances in the UK where the English Rule does not apply – the Employment Tribunal, the Social Entitlement Chamber, even the Family Court – therefore offer wider opportunities for pro bono lawyers to provided much needed assistance. As discussed in the earlier sections, some of these tribunals are also better suited to a wider range of advocates and so are unsurprisingly home to a lot of the more successful pro bono projects in the UK.

**Public funding**

The final issue this paper will consider is the availability and method of public funding for legal work for poor or disadvantaged individuals. Both the UK and the US use the term ‘legal aid’ in circumstances relating to public legal funding, but in quite different ways, so I shall avoid using it to minimise confusion. I will avoid discussing the public funding of criminal legal aid work as it holds little relevance to pro bono practice and instead focus of the provision of civil legal support.[[65]](#footnote-65)

In the US, ‘legal aid’ organisations are non-profits which provide legal assistance without charge to those in need. While there are some profit-making law firms which do public interest law under those costs-shifting statues described previously, it is non-profit organisations that provide the vast majority of assistance to those who are not able to afford lawyers. The funding of these organisations can vary greatly, both in terms of revenue and source. Sources of revenue could include individual donations, corporate donations (often from law firms),[[66]](#footnote-66) and grants from pubic bodies, including the local, state and federal governments. Most of these forms of funding will come with restrictions of some sort which will influence the services the organisation provides. For example, some sources of public funding will come with the stipulation that the grant is only used to assist those below a specific income threshold or who are not undocumented immigrants.[[67]](#footnote-67)

The largest funder of civil legal support nationally is the Legal Services Corporation, which receives from Congress an annual budget of around $500 million for a country with a population of over 300 million people.[[68]](#footnote-68) By comparison, the Legal Aid Agency’s budget for civil cases amounts to around £700 million ($940 million dollars) within England and Wales for a population of under 60 million. Although the Legal Services Corporation is by no means the only funder of legal support in the US, the different amounts of provision show how different the availability of funded legal support is.[[69]](#footnote-69) By the Legal Services Corporation’s own measure, only 14% percent of the country’s legal needs are met.[[70]](#footnote-70) Although there are no equivalent figures produced for the UK, given the relative levels of funding, we can presume that the demand for pro bono support is not quite as desperate.

Beyond just the amount of money provided, it is worth considering the method of public funding. In the US, this is typically through block grants, i.e. a single grant which is to be used either to assist a minimum number of people or as many people as possible. For instance, the Legal Service Corporation’s Basic Field Grant is calculated on the basis of how many people within a specified area are below a federal poverty line, with further funds awarded on the basis of Native American and agricultural populations.[[71]](#footnote-71) With that money grantees are expected to provide effective support to as many people as possible who meet eligibility requirements.[[72]](#footnote-72) In this form of funding, recipients are incentivised to make their resources stretch as far as possible – including by leveraging their services through the use of pro bono support from lawyers who normally work in private practice. For Basic Field Grant recipients, they are in fact mandated as a term of their funding to use 12.5% of their grant on ‘private attorney involvement’ – typically this is by funding projects that facilitate pro bono and by hiring dedicated pro bono coordinators.[[73]](#footnote-73) In recent years, the Legal Services Corporation have further encouraged the use of pro bono by their grant recipients through a Pro Bono Innovation Fund, which provides additional resources to assist in developing new ways of utilising the support of volunteer lawyers.[[74]](#footnote-74)

The public funding of legal work in the UK follows a very different model. ‘Legal aid’ in the UK refers to the provision of money by the Legal Aid Agency[[75]](#footnote-75) for work now carried out under the framework provided for by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (known as LASPO) and associated other statutes and regulations. For someone to qualify for legal aid, there is a three-stage test which must be met. First, the legal issue must be in scope, i.e. it must be in an area of law which LASPO states should be publically funded. Examples of issues within scope are defences against eviction, resisting forced adoptions and claims against local authorities about the provision of community care. Standard negligence claims, employment (aside from discrimination claims) and housing disrepair claims are example of issues which are not ‘in scope’ under LASPO, although there is an ‘exceptional case funding’ regime which allows for public funding if otherwise an individual’s human rights might be affected.[[76]](#footnote-76) The second issue is eligibility. This is primarily a means test, although receipt of certain state benefits will mean that you automatically qualify for legal aid. The third test is that the claim must have merit, i.e. be worthwhile and have a reasonable prospect of success. This is judged by the Legal Aid Agency after representations by the lawyer and can be appealed.[[77]](#footnote-77)

Lawyers representing clients who qualify for legal aid funding cannot typically make independent applications to have their fees paid without having a contract in place with the Legal Aid Agency.[[78]](#footnote-78) The contracts are usually awarded in tendering rounds every few years and cover one particular area of law, for example criminal law, prison law or public law. Effort is meant to be made to make sure that each region of the country has adequate provision of legal aid but unfortunately, it can be very patchy, especially given the number of firms that have exited the market in recent years.[[79]](#footnote-79) While many non-profit legal services organisations hold legal aid contracts, the vast majority of work funded by the Legal Aid Agency is undertaken by private profit-making firms. This funding system’s similarity to the US Medicare health system means that it is often referred to as a ‘judicare’ model.

This system of public funding of legal work is perhaps the most important factor that shapes the landscape for pro bono. At a fundamental level, the much greater provision of publicly-funded legal support in the UK has meant that the need for pro bono support has been comparatively less. That being said, provision has been decreasing since the mid-1990s and since the introduction of LASPO in 2013, has been the worst since the introduction of the legal aid system by the Legal Aid and Advice Act 1949. This reduction in provision is not only at the root of why we ask the question of how to encourage effective pro bono, but also shapes the answer.

Traditionally, lawyers have avoided acting pro bono in areas for which public funding has been available. As many lawyers have built almost entirely publicly funded practices, it has been considered inappropriate for pro bono lawyers to encroach on their livelihoods and to offer to do that work for free – particularly when funding from the Legal Aid Agency comes with the benefit of costs protection and money for disbursements.[[80]](#footnote-80) This divide has become complicated by a number of factors. The first is that due to freezes in the eligibility level, a slowly reducing number have become eligible for legal aid.[[81]](#footnote-81) This means that it is quite possible for a client to have financial difficulties great enough that they cannot practically afford to hire lawyers (or take the costs risk of litigation), yet be above the threshold to qualify for funding from the Legal Aid Agency. Lawyers who wish to do pro bono work must then either identify those clients who are too well off to be eligible for legal aid but still poor enough to warrant free help or alternatively they can give support on legal issues for which public funding is unavailable.

The second factor to consider is that, following LASPO, there are a number of legal areas which are now unfunded but which have traditionally been within the legal aid system, including much of family, education and immigration work. However, there is some hesitancy among pro bono lawyers and organisations to step into this gap, lest it be seen as proof by policy makers that public funding is unnecessary for those areas. Finally, there are areas which have never been publicly funded - commercial litigation, for example – and although these kinds of cases do not typically involve the kind of sympathetic clients that typically attract pro bono lawyers, some projects do focus on these areas, particularly for small businesses or non-profit clients.[[82]](#footnote-82)

An alternative to pro bono lawyers either evading or encroaching upon publicly-funded legal issues might be to work directly with legal aid providers to maximise their efficiency, as is the case with LSC-funded organisations in the US, but this runs into several problems. Firstly, for the most part, publicly-funded work is carried out by for profit companies. Although legal aid firms often have a public service ethos, with some even running attached charities, the fact that they are in the market to make money essentially precludes other lawyers assisting them on a charitable basis. Even for non-profit organisations which have legal aid contracts, their primary funding model is based on hiring specialist staff and billing the Legal Aid Agency for the work they provide. By using pro bono assistance on issues that would qualify for public funding, it would mean reducing the non-profit’s income in favour of using non-specialist lawyers.

While the landscape of public funding in the US is more conducive to pro bono, it is worth remembering that this is at least partly as a result of demand – something which the UK should not wish to emulate. While a legal aid system which is funded by block grants might better facilitate the use of pro bono, it is a model which has serious problems in ensuring effective access to justice. Unless generously funded, resources will not necessarily be enough to meet the legal needs of the population and so many who have meritorious cases will have to be turned away.[[83]](#footnote-83) Pro bono can be useful to minimise this justice gap but we must consider the practical and ethical concerns raised by the idea of building a system of access to justice that relies on the voluntary contributions of the profession. Although the Legal Aid Agency’s budget fell foul of austerity policies, as a model its levels of funding should in theory be elastic to the population’s needs, provided they meet the tests of scope, eligibility and merit.

**Conclusion**

The presumption that pro bono work is an untapped resource just waiting to help plug the justice gap in the UK is a naïve one – even if it is a view held by at least one Lord Chancellor.[[84]](#footnote-84) From a cursory comparison across the Atlantic, it might seem that UK lawyers are not contributing as much as might be expected from them, but I have highlighted a number of legal and institutional factors which limit the effectiveness and availability of pro bono work. While each of the four factors I have discussed may not necessarily have an overwhelming effect individually, in concert they offer serious problems for the viability of pro bono work in many contexts within the UK legal system.

I accept that this paper has primarily been negative in focus; I do not doubt that there may be elements of the UK legal system which offer a comparatively more fruitful opportunity for the practice of pro bono than in the US. I welcome further study on this issue, both in terms of positive and negative comparison. I wish to reiterate that whilst each of the features of the UK that I have discussed have represented a barrier to pro bono work, I am not necessarily using this as an opportunity to advocate for change. Pro bono work is only a part of a wider legal ecosystem and will never be an effective substitute for a properly funded system of legal aid. While access to justice may be degrading in the UK, we are thankfully not yet at the stage where we look to the US with envy.

Despite the focus on the barriers faced by pro bono lawyers in the UK, I hope to encourage rather than dissuade the practice of what is an important part of legal professional ethics. While being realistic about the institutional difficulties pro bono work faces, there is undoubtedly more work that can be done and hopefully this study offers a framework for the appraisal of the viability of effective pro bono projects in the UK, whether transposed from the US context or elsewhere.

1. Advice and Information Manager, Liberty (National Council for Civil Liberties). The research that made this paper possible was generously funded by a Winston Churchill Memorial Trust Fellowship. [↑](#footnote-ref-1)
2. The United Kingdom is in fact made up of three jurisdictions; England and Wales, Northern Ireland and Scotland, but for simplicity’s sake, I will mainly refer to them collectively during this paper. The US, on the other hand is made up by both the state and federal jurisdictions; although certain factors will differ based on state, most are consistent throughout the country. [↑](#footnote-ref-2)
3. ‘Global Legal Services Market Report 2017 - Research and Markets’, Business Wire, 4 May 2017: <https://www.businesswire.com/news/home/20170504005920/en/Global-Legal-Services-Market-Report-2017--> [↑](#footnote-ref-3)
4. ‘The Most Litigious Countries in the World’, Clements Worldwide: <https://www.clements.com/sites/default/files/resources/The-Most-Litigious-Countries-in-the-World.pdf> [↑](#footnote-ref-4)
5. TrustLaw Index of Pro Bono 2016: <http://www.trust.org/contentAsset/raw-data/d31d8b72-0f82-4241-88e1-71abc90e3d72/file>, cf. p. 69, p. 93. [↑](#footnote-ref-5)
6. Ibid, p. 93. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Information relating to the practice of pro bono in the much smaller jurisdictions of Northern Ireland and Scotland is much harder to find. However, see notes produced by Latham & Watkins for the US-based Pro Bono Institute, on Northern Ireland (<https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-northern-ireland.pdf)> and Scotland (<https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-scotland.pdf)> [↑](#footnote-ref-8)
9. TrustLaw Index of Pro Bono 2016, p. 69. [↑](#footnote-ref-9)
10. ‘The Pro Bono Protocol’, LawWorks: https://www.lawworks.org.uk/why-pro-bono/what-pro-bono/pro-bono-protocol [↑](#footnote-ref-10)
11. ‘What Counts’, Pro Bono Institute, 2008: <http://www.probonoinst.org/wpps/wp-content/uploads/what-counts-2008.pdf> [↑](#footnote-ref-11)
12. CAF World Giving Index 2016, Charities Aid Foundation, October 2016, p. 11. <https://www.cafonline.org/docs/default-source/about-us-publications/1950a_wgi_2016_report_web_v2_241016.pdf> [↑](#footnote-ref-12)
13. An overview of philanthropy in Europe, Observatoire de la Fondation de France / CERPhi, April 2015: www.fdnweb.org%2Fffdf%2Ffiles%2F2014%2F09%2Fphilanthropy-in-europe-overview-2015-report.pdf&usg=AOvVaw0QlY3QFp8V5skwjScWWIKc [↑](#footnote-ref-13)
14. CAF World Giving Index 2016, p. 11. [↑](#footnote-ref-14)
15. TrustLaw Index of Pro Bono 2016: <http://www.trust.org/contentAsset/raw-data/d31d8b72-0f82-4241-88e1-71abc90e3d72/file>, p 93. [↑](#footnote-ref-15)
16. ibid, p 69. [↑](#footnote-ref-16)
17. ibid, p. 70. [↑](#footnote-ref-17)
18. American Bar Association, Model Rule 6.1: <https://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html> [↑](#footnote-ref-18)
19. James L. Baillie & Judith Bernstein-Baker, ‘In the Spirit of Public Service’ in Law & Inequality Volume 51, 1995: <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1436&context=lawineq> [↑](#footnote-ref-19)
20. First through the Poor Persons Act (11 Hen.7, C12) in 1495, later through Poor Person’s Procedure and Dock Brief system. [↑](#footnote-ref-20)
21. That being said, it is worth differentiating between the American Bar Association, which is an independent voluntary representative body, with the UK’s Bar Council (through the Bar Standard Board) and the Law Society (through the Solicitors Regulation Authority) which have both representative and regulatory functions. Given this responsibility, it is perhaps less appropriate for those UK institutions to set ‘aspirational’ targets and obligations. [↑](#footnote-ref-21)
22. It is also possible to qualify as a lawyer through the Chartered Institute of Legal Executive (CILEX), through the recently introduced legal apprenticeship model or as a transferring foreign lawyer. [↑](#footnote-ref-22)
23. The effects on pro bono of the UK’s split profession will be discussed in a later section of this paper. [↑](#footnote-ref-23)
24. This is a description of the routes of qualification in the English and Welsh jurisdiction, but Scotland and Northern Ireland follow a similar structure. [↑](#footnote-ref-24)
25. Elizabeth Keyes, David C. Koelsch and Alejandro Posadas, ‘Clinical Legal Education’ in U. Det. Mercy L. Rev., 2014: <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1347&context=all_fac> [↑](#footnote-ref-25)
26. Standards 303(a)(3), 303(b) and 304, ABA Standards and Rules of Procedure for Approval of Law Schools 2017-2018: <https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_aba_standards_rules_approval_law_schools_final.authcheckdam.pdf>. See also Managing Director’s Guidance Memo, March 2015: <https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_.authcheckdam.pdf> [↑](#footnote-ref-26)
27. See the Law School at the University of Chicago’s ‘Pro Bono Pledge of 50 hours completed before graduation <https://www.law.uchicago.edu/news/evolution-experiential-learning> [↑](#footnote-ref-27)
28. See Harvard Law School’s Requirements for the J.D. Degree: <https://hls.harvard.edu/dept/academics/handbook/rules-relating-to-law-school-studies/requirements-for-the-j-d-degree/pro-bono-requirement/> [↑](#footnote-ref-28)
29. Section 520.16, New York’s Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, available <https://www.nycourts.gov/ctapps/520rules10.htm>. See also <https://www.nycourts.gov/attorneys/probono/faqsbaradmission.pdf> [↑](#footnote-ref-29)
30. Kim Dustman and Ann Gallagher, Analysis of ABA Law School

    Applicants by Age Group: 2011–2015, p. 1: <https://www.lsac.org/docs/default-source/data-(lsac-resources)-docs/analysis-applicants-by-age-group.pdf> [↑](#footnote-ref-30)
31. Examples of which can be found through the LawWorks and Attorney General's Student Pro Bono Awards: <https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/lawworks-and-attorney-generals-student-pro-bono-awards-2018> [↑](#footnote-ref-31)
32. The LawWorks Law School Pro Bono and Clinic Report 2014, p32: <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf> [↑](#footnote-ref-32)
33. As far as I can tell, all the GDL courses in the country consist only of the seven core modules required by the Solicitor’s Regulation Authority and the Bar Standards Board. [↑](#footnote-ref-33)
34. See for example the modules on offer as part of the BPTC at City Law School, pp. 8-9: <https://www.city.ac.uk/__data/assets/pdf_file/0010/400006/BPTC-with-LLM-Programme-Specification.pdf> [↑](#footnote-ref-34)
35. Perhaps the developed of these are Berkley Law’s Student-Initiated Legal Services Projects: <https://www.law.berkeley.edu/experiential/pro-bono-program/slps/> [↑](#footnote-ref-35)
36. Social Mobility in a Time of Austerity, Young Legal Aid Lawyers, 2018, p. 5. <http://www.younglegalaidlawyers.org/sites/default/files/Soc%20Mob%20Report%20-%20edited.pdf> [↑](#footnote-ref-36)
37. There are also chartered legal executives, but these are a much smaller part of the profession and are functionally very similar to solicitors once fully qualified. [↑](#footnote-ref-37)
38. Richard Abel, *The Legal Profession in England and Wales,* Wiley-Blackwell, 1998, pp. 35-37, 139-142. [↑](#footnote-ref-38)
39. Non-contentious issues (e.g. the sale of complex property, regulatory compliance, licensing etc) may still involve a barrister, but more likely to give expert advice. [↑](#footnote-ref-39)
40. In 2017, there were 1,665 self-employed QCs out of a total 16,435 self-employed barristers: <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/> [↑](#footnote-ref-40)
41. American readers may especially enjoy this explanation of a unique and perhaps antiquated feature of the UK legal world: <https://www.bloomberg.com/news/features/2017-05-23/the-exquisitely-english-and-amazingly-lucrative-world-of-london-clerks> [↑](#footnote-ref-41)
42. Through a solicitor becoming a ‘solicitor-advocate’ or by becoming qualified for ‘Direct Access’ as a barrister. [↑](#footnote-ref-42)
43. Marialuisa Taddia, ‘Solicitor-advocates: raising the bar’, The Law Society Gazette, 22 September 2014: <https://www.lawgazette.co.uk/features/solicitor-advocates-raising-the-bar/5043336.article> [↑](#footnote-ref-43)
44. I will explore the issue of costs at greater length in a later section. [↑](#footnote-ref-44)
45. Billable hours targets are often used to benchmark a lawyer’s performance for bonuses and promotions. [↑](#footnote-ref-45)
46. TrustLaw Index of Pro Bono 2016, p. 24. [↑](#footnote-ref-46)
47. See for example Matrix Chambers’ Causes Fund and School Exclusion Project. [↑](#footnote-ref-47)
48. Barristers’ Working Lives, Bar Standards Board/Bar Council, 2013, p. 61: <https://www.barstandardsboard.org.uk/media/1597662/biennial_survey_report_2013.pdf> [↑](#footnote-ref-48)
49. Bar Pro Bono Hub, The Bar Council: <https://www.barcouncil.org.uk/media-centre/campaigns/bar-pro-bono-hub/> [↑](#footnote-ref-49)
50. The Bar Pro Bono Unit, Annual Review 2016: <https://www.barprobono.org.uk/public/downloads/XyJXX/FINAL_BarProBono_AnnualReview_2016_DIGITALSPREADS.pdf> [↑](#footnote-ref-50)
51. Practising barrister statistics, Bar Standards Board: <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics> [↑](#footnote-ref-51)
52. Northern Ireland and Scotland follow similar structures. [↑](#footnote-ref-52)
53. A better understanding can be gained by referring to Glanville L. Williams, *Learning the Law,* Sweet & Maxwell, 2010. [↑](#footnote-ref-53)
54. Lisa T. McElroy, ‘From Grimm to Glory’ in Indiana Law Journal, Volume 84, Issue 2, p. 592: <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1104&context=ilj> [↑](#footnote-ref-54)
55. Sally Herships, ‘The American Bar Association is trying to address a shortage of trial lawyers’ Marketplace, 3 August 2017: <https://www.marketplace.org/2017/07/14/world/aba-seeks-address-shortage-trial-lawyersexperience> [↑](#footnote-ref-55)
56. Peter Reeves, *Are Two Professions Necessary?*, Waterlow, 1992. [↑](#footnote-ref-56)
57. John F. Vargo, ‘The American Rule on Attorney Fee Allocation’ in The American University Law Review, 42, no. 4, 1993, pp. 1581-1590: <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1586&context=aulr> [↑](#footnote-ref-57)
58. Ibid, p. 1589. [↑](#footnote-ref-58)
59. Ibid, p. 1597. [↑](#footnote-ref-59)
60. E.g. the qualified one-way costs shifting (QOCS) regime for personal injury claims under Rules 44.13 to 44.17 and Cost Capping Orders for Judicial Review claims under Rule 46.16 of the Civil Procedure Rules. [↑](#footnote-ref-60)
61. Martha de la Roche, ‘Recovering pro bono costs’: <http://disputeresolutionblog.practicallaw.com/recovering-pro-bono-costs/> [↑](#footnote-ref-61)
62. The further effects of the UK legal aid system eon pro bono practice will be discussed in the next chapter. [↑](#footnote-ref-62)
63. This also includes the ‘Small Claims Court’, which is not actually a separate court but instead is a specific set of procedure rules that is used in the County Court for simple money claims of £10,000 and under. [↑](#footnote-ref-63)
64. Sarah Hannett, Costs in the First-Tier and Upper Tribunals, Public Law Project Conference paper, 2013: http://www.publiclawproject.org.uk/data/resources/79/PLP\_2013\_Hannett\_Costs\_in\_the\_Tribunals.pdf [↑](#footnote-ref-64)
65. This is for a few reasons. Firstly, the practicalities of the criminal justice systems are more divergent in the US and the UK than in the civil legal system. Normal criminal legal defence offers only a very small part of pro bono in the US and the UK, with the exception to this in the US being death penalty appeal work, which has little relevance to the UK given that it does not have a system of capital punishment. [↑](#footnote-ref-65)
66. The influence of the US tax code and the ability to write off tax liability with charitable donations is factor which could have a further effect on the legal aid infrastructure and is worthy of further investigation. [↑](#footnote-ref-66)
67. 2018 Basic Field Grant Terms and Conditions, Legal Services Corporation: <https://www.lsc.gov/2018-basic-field-grant-terms-and-conditions> [↑](#footnote-ref-67)
68. FY 2017 Budget Request, Legal Services Corporation: <https://www.lsc.gov/media-center/publications/fy-2017-budget-request> [↑](#footnote-ref-68)
69. The LSC provides on average roughly 40% of the income for each of its grantees, see <https://www.lsc.gov/stateprogram-data-grantee-funding>. Beyond this there are many legal service organisations which do not receive any LSC funding. [↑](#footnote-ref-69)
70. The Justice Gap: Executive Summary, Legal Services Corporation: <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-ExecutiveSummary.pdf> [↑](#footnote-ref-70)
71. Basic Field Grant, Legal Services Corporation: <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant> [↑](#footnote-ref-71)
72. 2018 Basic Field Grant Terms and Conditions, Legal Services Corporation: <https://www.lsc.gov/2018-basic-field-grant-terms-and-conditions> [↑](#footnote-ref-72)
73. Code of Federal Regulation, Title 45, Subtitle B, Chapter XVI, Part 1614: <https://www.ecfr.gov/cgi-bin/text-idx?SID=9dacb875bcb842b3520c5ceb82a366ac&mc=true&node=pt45.4.1614&rgn=div5> [↑](#footnote-ref-73)
74. Pro Bono Innovation Fund, Legal Services Corporation: <https://www.lsc.gov/grants-grantee-resources/our-grant-programs/pro-bono-innovation-fund> [↑](#footnote-ref-74)
75. Or alternatively, the Northern Ireland Legal Services Agency or the Scottish Legal Aid Board. [↑](#footnote-ref-75)
76. This system has proved controversial in its implementation, see Katy Watts, Exceptional Case Funding, Public Law Project: <http://www.publiclawproject.org.uk/data/resources/289/Exceptional-Case-Funding-Briefing.pdf> [↑](#footnote-ref-76)
77. ‘Provision of legal aid’, Debate Pack, House of Commons Library, Number CDP-2017-0239, 28 November 2017 [↑](#footnote-ref-77)
78. The exceptional case funding scheme is an exception. [↑](#footnote-ref-78)
79. Anushka Asthana, ‘Number of legal aid providers falls 20% in five years, figures show‘, The Guardian, 19 September 2017: <https://www.theguardian.com/law/2017/sep/19/number-of-legal-aid-providers-falls-20-in-five-years-figures-show> [↑](#footnote-ref-79)
80. Disbursements are the additional costs that can be incurred through litigation which aren’t court or lawyer’s fees, such as travel expenses. [↑](#footnote-ref-80)
81. Owen Bowcott, ‘Poorest priced out of justice by legal aid rules, says Law Society’, The Guardian, 20 March 2018: <https://www.theguardian.com/uk-news/2018/mar/20/poorest-priced-out-of-justice-by-legal-aid-rules-says-law-society> [↑](#footnote-ref-81)
82. See for example LawWorks’s Not-For-Profits Programme: <https://www.lawworks.org.uk/legal-advice-not-profits> [↑](#footnote-ref-82)
83. The Justice Gap: Executive Summary, Legal Services Corporation: <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-ExecutiveSummary.pdf> [↑](#footnote-ref-83)
84. David Barret, ‘Michael Gove: Wealthy lawyers should do more free work for the justice system’, The Telegraph, 23 June 2015: https://www.telegraph.co.uk/news/uknews/law-and-order/11693145/Michael-Gove-Wealthy-lawyers-should-do-more-free-work-for-the-justice-system.html [↑](#footnote-ref-84)