



LawWorks Practice Guidance

Solicitors and pro bono: regulatory issues

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1. INTRODUCTION

1. This guidance aims to assist solicitors to understand the rules and regulations that apply when providing pro bono advice, casework or representation.
2. As this guidance shows, a broad range of legal pro bono can be undertaken to the benefit of many individuals, charities and communities. In fact, so long as other practice requirements are in place, there is little by way of pro bono which solicitors can't do – if they have the time and enthusiasm.
3. The Law Society's Pro Bono Manual is an excellent resource for those undertaking pro bono work; the Manual is currently being revised. The Manual can be downloaded from the Law Society's website at:
<https://www.lawsociety.org.uk/support-services/practice-management/pro-bono/pro-bono-manual/>
4. LawWorks (the Solicitors Pro Bono Group) promotes, supports and facilitates pro bono legal services that extend access to the law for individuals and communities in need and the organisations that support them. We champion pro bono because of the positive contribution and difference it makes for individuals, communities and society. For more information about LawWorks (including LawWorks' membership and how to support our work) see **Appendix 5**.

Overview

5. This guidance is intended to assist solicitors to understand the rules and regulations that apply to them when volunteering to provide legal pro bono, including:
 - in legal advice clinics or centres (paras 43-46);
 - by advising charities and other not-for-profit organisations (paras 46-51); and
 - by undertaking casework or representation (including 'secondary specialisation' work (paras 52-58)
6. In this guide we sometimes refer to solicitors undertaking pro bono as 'volunteers' or as 'volunteering'.
7. In this guide we assume that solicitors have a current practising certificate. Solicitors who do not have a current practising certificate should consider the rules and arrangements discussed throughout this guidance, especially partnering arrangements (see paragraph 25). It is for individuals to ensure that their practice work complies with the SRA's standards and regulations.

8. Many of the regulatory rules applicable to volunteers in one setting are applicable to volunteers in another setting. The main rules and regulations, as well as the key considerations, applicable to volunteers are covered in detail in paragraphs 19 to 41 (also see **Appendices**). Paragraphs 42 to 58 then describe particular issues or requirements arising in specific pro bono contexts. There are also particular rules in respect of Registered Foreign Lawyers (RFLs) which we summarise in **Appendix 4**.
9. The SRA's standards and regulations, the Authorisation of Individuals (Amendment) Regulations ("AIR"), and other changes came into force on 25 November 2019, relaxing some former restrictions. The key statutes and regulations are briefly set out in **Appendix 2**.
10. To sit alongside its new standards and regulations, the SRA has produced an excellent guide for non-profit bodies, including pro bono organisations:
<https://www.sra.org.uk/globalassets/documents/solicitors/not-profit-guidance.pdf?version=4ad951>
11. This guidance does not deal with the regulation of the *paid work* of solicitors, and we have produced separate guidance for the pro bono work of in-house solicitors.¹ *This guidance does not constitute advice*. In all cases individual volunteers, and other readers of this guidance, should satisfy themselves that they and the projects they volunteer through (or administer) meet the relevant regulatory requirements. Where appropriate, advice should be obtained before taking or refraining from taking action in relation to any aspect of this guidance.

SOURCES OF REGULATION

14. The key sources of regulation governing the provision of legal services by solicitors are found in:
 - The Legal Services Act 2007 ('LSA')
<http://www.legislation.gov.uk/ukpga/2007/29/contents>
 - SRA Principles
 - SRA Code of Conduct for Solicitors, Registered European Lawyers (RELS) and RFLs
 - SRA Authorisation of Firms Rules
 - SRA Authorisation of Individuals (Amendment) Regulations (AIR)
 - SRA Transparency Rules
 - SRA Indemnity Insurance Rules 2019 ('IIR')
<https://www.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/>

¹ <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-practice-guidance-house-solicitors-and-pro-bono>

REGULATORS

15. The principal regulators for solicitors are:
 - a. The Legal Services Board ('LSB');
 - b. The Law Society of England and Wales; and
 - c. The Solicitors Regulation Authority ('SRA')

16. The LSB is a statutory body which derives its remit and authority from the LSA. The LSB is, among other things, responsible for overseeing the legal regulators in England and Wales, including the SRA. The LSB is independent of Government and of the legal profession.

17. The Law Society is an approved regulator under the LSA. It is the representative body for the solicitors' profession. The Law Society's regulatory functions are delegated to the SRA, which is an independent arm of the Law Society. It receives around 30 per cent of the practising certificate fees paid to the SRA in order to "support, represent and promote the profession".

18. The SRA sets the standards, such as Codes of Practice, by which solicitors must abide in order to provide legal services.

AUTHORISATION RULES – AN OVERVIEW

19. SRA authorisation to practice undertake legal practice work as a solicitor derives from the regulations on the authorisation of firms/regulated entities,² and the authorisation of individuals, including admission as a solicitor.³ Whilst under the previous Practice Framework Rules, the ways in which a solicitor could practice were restrictive, solicitors are now permitted to work in work in different ways (see **Appendix 1 and 2** for background). These are:

- i. within an SRA-regulated/authorised law firm or alternative business structure (ABS);
- ii. working as a sole practitioner (i.e., running an authorises sole practice);
- iii. working in non-regulated organisation (i.e., as an in-house solicitor);⁴
- iv. working in non-commercial “special bodies” defined in the Legal Services Act as a not for profit body, (b) community interest company, or (c) an independent trade union.

20. Volunteering does not exist as its own category of practice, however it is possible for solicitors to volunteer in various ways *in the course of regulated employment* pursuant to AIR 9.1, and in different pro bono settings (see paras 42-58).

21. Alternatively, solicitors can undertake pro bono work *outside of their regulated employment*. The capacities in which it is permissible to volunteer independently are:

- i) as 'freelancers' under AIR 10.2(b), having not elected to obtain authorisation as a registered sole practitioner; or
- ii) as a registered Sole Practitioner under AIR 10.1

22. The 'freelancer' status is a significant innovation under the AIR. Regulation 10 of the AIR sets out the ways in which solicitors may practise on their own, namely:

- i. by having a practice that consists entirely of carrying on activities that are non-reserved legal activities;
- ii. under regulation 10.2(b), which sets out the circumstances in which a solicitor may practise on their own and carry on reserved legal activities, including having adequate and appropriate PII and being engaged directly by the client.

RESERVED AND ‘NON-RESERVED’ LEGAL ACTIVITY – AN OVERVIEW

23. The LSA breaks down the work of solicitors into separate ‘activities’. These are then graded in terms of whether they are ‘reserved’ or ‘non-reserved’ activities (**See Appendix 3**).

² <https://www.sra.org.uk/solicitors/standards-regulations/authorisation-firms-rules/>

³ <https://www.sra.org.uk/solicitors/standards-regulations/authorisation-individuals-regulations/>

⁴ <https://www.lawworks.org.uk/sites/default/files/files/In-housePracticeGuidance-web-ver1.2.pdf>

24. There are very few legal activities which solicitors cannot undertake in practice when providing legal pro bono (volunteering), with the restrictions that there are relating to certain areas of legal services, such as immigration and financial services, both of which can attract additional regulatory requirements and processes.
25. If a solicitor wishes to provide certain restricted legal services, such as immigration and consumer debt work, they may consider 'partnering' with an authorised law firm or other partner which is authorised to undertake the work. The solicitor will be able to take advantage of the partner's authorisation, as well as supervision arrangements provided by the partner (as well as potentially coming under the partner's insurance).

Legal activities – a closer look

26. Both reserved and non-reserved legal activities can be undertaken by solicitors in a pro bono context, subject only to the rules which generally apply to legal practice, such as conflicts of interest, complaints handling and insurance requirements; and, subject to any additional restrictions applicable to certain types of work (e.g., immigration and debt/consumer credit work) and/or status as foreign lawyers, especially (*at the time of writing*) non-EU lawyers.

a) Legal advice

27. Apart from additional authorisation requirements in respect of certain categories of legal advice – namely, immigration and debt / consumer credit advice, both of which are discussed below – legal advice, including reserved legal advice (e.g. certain aspects of property law advice, for example assisting or advising in connection with the terms of a lease) may be provided by solicitors in a pro bono context.

Immigration advice

28. SRA Regulation 9.5 AIR states that if you are a solicitor, you may undertake **immigration work**, provided that such work is undertaken through (a) an authorised body, (b) an authorised non-SRA firm that is a qualified person under the Immigration and Asylum Act 1999; or (c) a body regulated by the Office of the Immigration Services Commissioner (OISC). Consequently, immigration advice may be given by solicitor volunteers in the following ways:

- i) through their SRA authorised employer (solicitors employed by an SRA authorised/regulated entity do not have to be registered with OISC:

<https://www.gov.uk/government/publications/oisc-regulation-and-solicitors/oisc-regulation-and-solicitors>);

- ii) they partner with an SRA authorised/regulated entity / solicitor, such as a solicitor employed by a law firm. The authorised/registered entity must take responsibility for delivering the legal services to the client. In this scenario volunteer solicitors and supervising solicitors must satisfy themselves that clients understand who is acting for them and the regulatory protections in place;
- ii) they partner with an OISC registered not-for-profit entity that engages an OISC registered solicitor to supervise the work in accordance with OISC guidelines (see a) above);
- iii) they are themselves a registered OISC (Office of the Immigration Services Commissioner) immigration adviser and volunteer in one of the permissible ways contained in AIR, for example ‘freelancing’ under 10(2)(a) or (b) AIR.

29. **Debt** and **consumer credit** advice should not be given by solicitors (e.g., in a clinic setting), unless: i) the clinic is authorised by the FCA (or because of a statutory exemption, for example Citizens Advice) to supply these services, ii) acting pro bono through their SRA authorised employer firm (either because of that firm’s FCA authorisation or because the condition in section 327 of FSMA have been met by the firm), iii) partnered with an authorised person (including a sole practitioner or otherwise permitted to provide such advice. This authorisation requirement is also stated in AIR 9.9.

30. For more information about the restrictions on providing debt advice, contact LawWorks; alternatively, see the FCA guidance at:

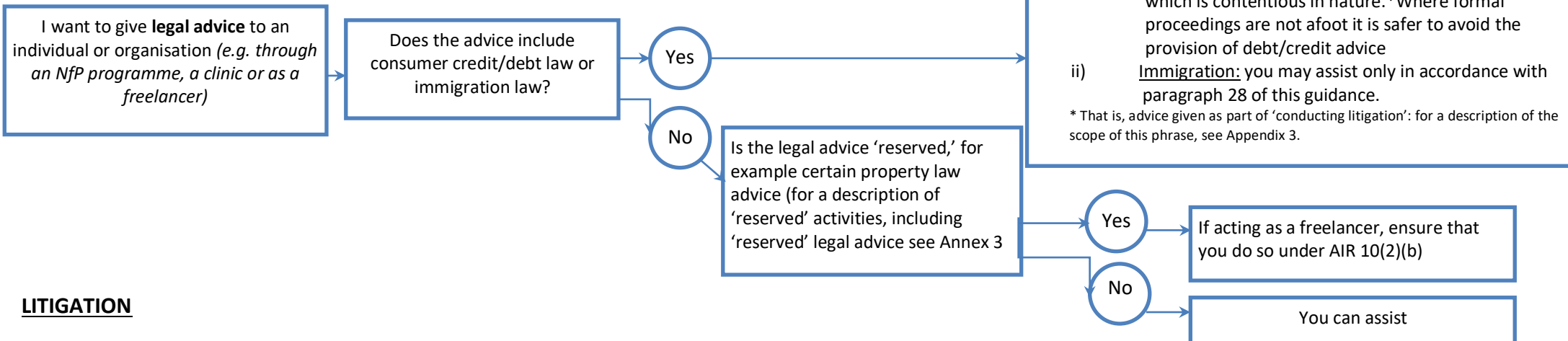
- i) <https://www.handbook.fca.org.uk/handbook/PERG/17/7.html>;
- ii) Further, the SRA has issued guidance at:
<https://www.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/>.

Reserved activities

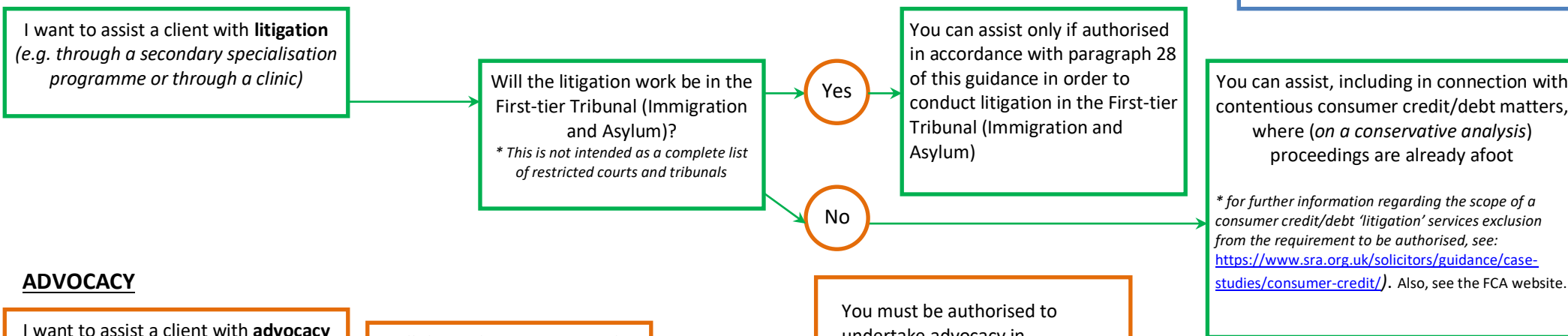
31. Whilst solicitor can undertake reserved activities on a pro bono basis, there are additional considerations if acting as a “freelancer”, and specific restrictions for in house solicitors.⁵ Reserved activities principally relate to litigation, advocacy, and certain types of documentation; in practice the areas of reserved activity are quite narrow and most pro bono activity will be unreserved. We deal with reserved activities in more detail in **Appendix 3**.

⁵ <https://www.lawworks.org.uk/sites/default/files/files/In-housePracticeGuidance-web-ver1.2.pdf>

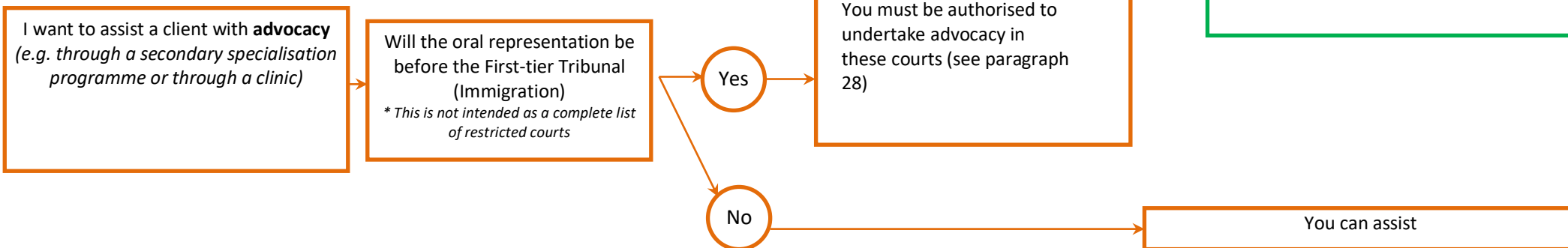
LEGAL ADVICE



LITIGATION



ADVOCACY



PRACTISING CERTIFICATE

32. To be qualified to practise as a solicitor (except in limited circumstances, such as being exempt as a Crown employee (e.g., as a Government Legal Department employee) you must have been admitted as a solicitor, be on the roll and have a practising certificate (s.1 Solicitors Act 1974 (SA)). You will be potentially committing a criminal offence under section 21 of the Solicitors Act, as well as being in breach of the AIR, if you practise contrary to the SA.

33. The SRA has published guidance to sit alongside the Standards and Regulations 2019. This states that you will come within section 1A, *“even if your job title has nothing in it to suggest you are a solicitor...the determining factor is whether you are employed in connection with the provision of legal services”*.⁶

34. In addition to the current guidance, we recommend that solicitors have regard to the SRA’s former guidance in connection with the former practice rules which prohibits solicitors from using any description which implies that you are qualified to act as a solicitor if you do not have a practising certificate.

35. In line with the SRA’s former guidance, solicitors with one or more of the following words in their job title should have in place a current practising certificate: "solicitor", "lawyer", "attorney", "legal practitioner" or "counsel". The SRA’s former guidance *“strongly advise[d]”* solicitors with the following words in their job titles to have in place a current practising certificate: "chief legal officer", "director of legal services", "head of legal affairs", "legal adviser", "legal and business affairs consultant", "legal consultant", "legal director", "legal expert", "legal specialist" and "legal officer".

36. In all of the circumstances, LawWorks generally recommends that solicitors participating in pro bono programmes have current practising certificates in place, or that they ensure that their work is supervised and signed off by a solicitor who does and who has relevant and sufficient experience of the matter (so that the legal service provided is always in the name of a solicitor with a current practising certificate).

PROFESSIONAL INDEMNITY INSURANCE

37. This section deals with the rules requiring practising solicitors to ensure that their legal practice work (including volunteering) is covered by a policy of insurance *when providing legal services to the public*. The SRA Indemnity Insurance rules (IIR) require that authorised bodies, including such bodies when acting on a pro bono basis, must have “qualifying insurance”.⁷

⁶ <https://www.sra.org.uk/solicitors/guidance/ethics-guidance/When-do-I-need-a-practising-certificate->

⁷ <https://www.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/#rule-3>

38. The indemnity insurance requirement for solicitors volunteering through a not for-profit entity - where reserved activities are being undertaken - is that it should be “adequate and appropriate”. Rule 5.6 of the new SRA Code of Conduct for Solicitors, RELs and RFLs (CCS) states: “If you are a solicitor or REL carrying on reserved legal activities in a non-commercial body, you must ensure that, (a) the body takes out and maintains indemnity insurance; and (b) that insurance provides adequate and appropriate cover in respect of the services that you provide or have provided, whether or not they comprise reserved legal services, taking into account any alternative arrangements the body or its clients may make.” LawWorks recommends that the even where reserved activities are not being undertaken the level of insurance cover should meet the self-evident minimum standard, “adequate and appropriate”.

39. This means that those responsible for managing the entity should, with reference to Rule 5.6 CCS, look at the sort of matters undertaken, consider the level of awards, damages, compensation, settlements, etc. and obtain insurance accordingly rather than having to meet the SRA’s prescribed limits of insurance cover.⁸

40. AIR 10 stipulates a similar “adequate and appropriate” insurance requirement for solicitors practising on their own account, including as a volunteer (i.e., this would apply if a solicitor chose to volunteer by stepping outside of their employment and undertaking the pro bono work in a freelance capacity). Regulation 10(2) requires freelancers to “take out and maintain indemnity insurance that provides adequate and appropriate cover in respect of the services that you provide or have provided, whether or not they comprise reserved legal activities.”

41. At its discretion, LawWorks may be able to provide professional indemnity insurance when this is not otherwise available.

PRO BONO IN SPECIFIC CONTEXTS AND SETTINGS

42. This section summarises the rules and practice requirements when:

- volunteering in legal advice clinics or centres;
- advising charities and other not-for-profit organisations;
- undertaking casework or representation (including for ‘secondary specialisation’ work).

Pro bono clinics

43. There are relatively few legal activities which solicitors working in private practice cannot undertake when volunteering at clinics. The restrictions that there

⁸ See IIR Annex 1, s2(1)

are relate to certain areas of legal practise, e.g. immigration law and consumer credit/debt law (see above).

44. Under the AIR it is also permissible for solicitors to volunteer in the course of private practice employment in clinics run by third parties, such as not-for-profit legal advice clinics. Ideally, relationships with employers should be formalised, for example a secondment arrangement; failing which they may arise informally, for example by working on client matters during working hours, using employers' resources, with employers' agreement.

45. It is permissible for solicitors to volunteer independently at pro bono clinics run by third parties (i.e., other than run by the employer) in each of the authorised capacities set out above (paras 19-22). Solicitors should bear in mind the restrictions contained in the LSA on undertaking reserved activities under AIR 10(2)(a) (i.e., freelancing under the first limb of AIR 10).

46. Whilst the 3 years supervision rule does not apply to non-commercial organisations or 'special bodies', we nonetheless recommend as best practice that where possible solicitors under 3 years PQE are supervised by a regulated person who is permitted to supervise under the SRA rules, as they apply to regulated individuals and bodies. Furthermore, in order to provide pro bono reserved services as a freelancer under 10(2)(b) a three years' minimum experience applies. The three years rule does still apply to authorised firms, however this, in practise, should not be a live issue (see AIR 9.4).

Charities and not-for-profit organisations

47. The LawWorks' Not-For-Profits programme provides the opportunity for solicitors to supply legal services to charities on a pro bono basis.

48. The programme connects smaller charities and other not-for-profits seeking legal advice with pro bono volunteers among LawWorks member firms and in-house teams. In LawWorks' experience solicitors tend to work on NfPP matters during normal working hours, making use of their employer's resources and with their agreement, which in many cases may indicate that employers have legal responsibility for the delivery of the legal services. For more information about LawWorks' Not-for-Profit Programme see <https://www.lawworks.org.uk/legal-advice-not-profits>

49. There is nothing in the AIR which would prevent solicitors from taking on most legal advice work on their own account under AIR 10.2(a) or (b), via LawWorks' Not-for-Profits Programme. Alternatively, solicitors who have also registered a sole practice may also undertake NfPP cases in this capacity, subject

to the need to do so under 10(2)(b) in respect of reserved legal services. For further information about LawWorks' Not-for-Profit programme go to the LawWorks website: <https://www.lawworks.org.uk/legal-advice-not-profits/free-legal-assistance/>

50. Not-for-profit organisations may require assistance with property matters, including advice and drafting of formal documents. Freelancers should take care not to undertake 'reserved instrument activities' which are reserved under the LSA, unless under 10(2)(b) AIR or acting through a registered sole practice. We have explained the scope and practicalities of this reservation in **Appendix 5**.

51. Where solicitors provide pro bono advice to not-for-profit organisations through a brokerage service, such as LawWorks' Not-for-Profits programme, individual solicitors usually have conduct of the file for the purpose of the SRA standards and regulations. Whilst legal advice is a non-reserved activity (but see above for when other restrictions may apply), we recommend that solicitors treat their pro bono legal advice work as part of their practice, hence a suitable policy of insurance must be in place to cover any work undertaken (see paras 69-63)

Casework and/or representation as a 'secondary specialisation'

52. Pro bono casework and/or representation can include undertaking legal work in areas of law beyond day-to-day areas of practice, an approach sometimes called 'secondary specialisation'. For example, LawWorks supports a Welfare Benefits Representation project supporting solicitors, with no prior experience of social security law, to represent clients in the First-tier (Social Entitlement Chamber) Tribunal. This, and similar tribunal representation projects, achieves success rates at appeal of over 90%.

53. Solicitors can undertake secondary specialisation voluntary work, provided:

- i) in tribunals and courts that are reserved, such as the County Court (excluding the Small Claims Track), High Court and the First-tier (Immigration and Asylum) Tribunal, they ensure that Higher Rights of Audience are in place; and,
- ii) they are competent to do so - see SRA Competence statement: <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>.

54. As explained elsewhere in this guidance, there are no restrictions on volunteers undertaking advocacy in the First-tier (Social Entitlement Chamber) Tribunal.

55. The AIRs permit solicitors to volunteer on LawWorks' secondary specialisation programme (or other similar programmes run by not-for-profit

organisations) in all of the authorised capacities summarised at paras 19-22). Under LawWorks' secondary specialisation programmes, LawWorks is the entity that supplies the legal services and its employed in-house solicitors have conduct of the file for regulatory purposes. Supervised volunteers take on varying degrees of responsibility, taking into account their experience.

Supervision and insurance

56. Supervision is an integral part of 'secondary specialisation'. As the volunteer solicitor may be practising in a 'new' area of law, they will be supervised by a qualified solicitor with an appropriate level of practice experience; hence solicitors of all levels of call should be prepared for their work to receive significant levels of oversight, not least as the supervising solicitor will usually have conduct of the file from the point of view of the SRA rules.

57. Supervision is the action or process of watching and directing what someone does or how something is done. It can be helpful to think about supervision both in terms of development (which is related to ongoing professional learning) and performance (which is related to standards of legal practice and expectations). It includes day to day support, guidance and advice, and supervisory file review of the technical quality of legal work and case management. For further information about supervision, please see our guidance at <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/supervision-guidance>

58. The legal services connected with secondary specialisation should be covered by a policy of indemnity insurance; for these requirements see paragraphs 37 – 41.

Appendix 1: Background to the SRA's regulation reforms

The SRA's "Looking to the Future" programme launched in 2015 set out to radically simplify its rules and Handbook. As well as aiming to make regulation more proportionate and principles-based – including removing duplicated legislative or case-law material and non-mandatory guidance from the Handbook - a specific objective was to enable solicitors to provide legal services from outside of regulated law firms.

A number of consultations followed and LawWorks responded to these.⁹ In response to specific issues that LawWorks raised with the SRA about pro bono, the SRA provided a helpful position statement regarding those working in-house or in private practice who are also conducting voluntary work with a not-for-profit body. This is available on the SRA website at: <https://www.sra.org.uk/solicitors/guidance/waivers/waiver-employment-status-pro-bono-work>

In the statement the SRA said that "We want to encourage those willing and able to carry out pro bono work to do so." The statement was intended to be transitional, clarifying that it is permissible to conduct voluntary work, whether or not it includes reserved legal activity for persons other than your employer, including for members of the public, but subject to certain restrictions.

That position has been reflected in the new regulations. As the SRA statement says "The new regulatory arrangements proposed by us are simplified and Rules 1 to 4 of the PFRs have been replaced with a much simpler provision in Regulation 9 of the SRA Authorisation of Individuals Regulations. This regulation adds very few restrictions on the way in which you may provide both reserved and non-reserved legal services and limits this to those restrictions which apply under legislation including, in particular, section 15(4) of the LSA."

Under the new regulations, solicitors can offer legal services to the public from within:

- i) regulated law firms;
- ii) a non-regulated organisation (subject to certain restrictions);
- iii) non-commercial organisations (subject to certain restrictions); or
- iv) as an SRA approved freelance solicitor (subject to certain restrictions).

Broadly speaking, the AIRs are permissive; i.e., as long as an activity is not expressly forbidden it is permitted. The former PFR tended to be restrictive, meaning that often it was necessary to find express permission in the rules. Information about the new rules can be found at: <https://www.sra.org.uk/solicitors/standards-regulations/>

⁹ <https://www.lawworks.org.uk/about-us/news/regulatory-reform-and-rapidity-change>

Appendix 2: The key SRA rules

The ways in which solicitors are permitted to practise, including as volunteers, are principally contained in the AIR, especially regulations 9 and 10. Regulations 9 and 10 should be read alongside the statutory rules which govern solicitors' practice, especially the Legal Services Act (LSA). Section 15(4) LSA contains a restriction on in-house solicitors' ability to undertaking "reserved" activities, in particular when acting *in the course of their employment* with non-regulated business employers.

Pursuant to the SRA's stated policy of avoiding duplication, there is no reference to the statutory rules in the AIR. However, regulations 9 and 10 do not alter the statutory position.

SRA Authorisation of Individuals (Amendment) Regulations (AIR)

These have replaced the Practice Framework Rules (PFR). The starting point for determining the permissibility of volunteering for all solicitors is regulation 9.1 AIR which states:

Reserved legal activities

9.1 Subject to regulations 9.2, 9.3, 9.5 to 9.10 and 10.2(b), if you are a solicitor with a current practising certificate, or an REL, you are entitled to carry on all reserved legal activities except notarial activities."

Regulation 9.5 deals with immigration work; the provision of immigration advice and immigration services is restricted to certain persons under the Immigration and Asylum Act 1999. Regulation 9.9 deals with financial services work, such as debt advice. The Financial Services and Markets Act 2000 ("FSMA") reserves the provision of "regulated activities" to persons and bodies authorised by the Financial Conduct Authority ("FCA").

Regulation 10 deals with solicitors practising on their own. It states:

"Practising on your own

10.1 *Subject to regulation 10.2, if you are a solicitor or an REL you must not act as a sole practitioner unless your practice is authorised as a recognised sole practice.*

10.2 *If you otherwise would be, you will not be regarded as acting as a sole practitioner and you will not therefore need to be authorised as a recognised sole practice if:*

(a) *your practice consists entirely of carrying on activities which are not reserved legal activities; or*
(b) *any reserved legal activities you carry on are provided through an authorised body or an authorised non-SRA firm, or in circumstances in which you:*

(i) have practised as a solicitor or an REL for a minimum of three years since admission or registration;

(ii) are self-employed and practise in your own name, and not through a trading name or service company;

(iii) do not employ anyone in connection with the services that you provide;

(iv) are engaged directly by the client with your fees payable directly to you;

(v) have a practising address in the UK;

(vi) take out and maintain indemnity insurance that provides adequate and appropriate cover in respect of the services that you provide; and
(vii) do not hold client money, save that you may hold money which falls within the category of client money set out in rule 2.1(d) of the SRA Accounts Rules so long as:
(A) any money held for disbursements relates to costs or expenses incurred by you on behalf of your client and for which you are liable; and
(B) you have informed your client in advance of where and how the money will be held, and you choose for your practice not to be authorised as a recognised sole practice.”

Employed solicitors wishing to provide reserved legal activities under the provisions of 10.2 (b) AIR need to notify the SRA of their intention to do so.

<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/preparing-to-become-a-sole-practitioner-or-an-sra-regulated-independent-solicitor/>

Further guidance on practising on your own can be found at:

<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/preparing-to-become-a-sole-practitioner-or-an-sra-regulated-independent-solicitor/>

Section 15 of the Legal Services Act (LSA): In-house solicitors

The relevant parts of section 15 LSA concerning in house solicitors undertaking reserved activity are:

“15 Carrying on of a reserved legal activity: employers and employees etc

(1) This section applies for the interpretation of references in this Act to a person carrying on an activity which is a reserved legal activity.

(2) References to a person carrying on an activity which is a reserved legal activity include a person (“E”) who—

(a) is an employee of a person (“P”), and

(b) carries on the activity in E’s capacity as such an employee.

(3) For the purposes of subsection (2), it is irrelevant whether P is entitled to carry on the activity.

(4) P does not carry on an activity (“the relevant activity”) which is a reserved legal activity by virtue of E carrying it on in E’s capacity as an employee of P, unless the provision of relevant services to the public or a section of the public (with or without a view to profit) is part of P’s business.”

See our in-house guidance for more detail on this, and our understanding of acting in the course of employment.¹⁰

Section 23 of the LSA: Special Bodies

The relevant parts of the LSA concerning non-commercial bodies undertaking reserved activity is:

23 Transitional protection for non-commercial bodies

(1) During the transitional period, a body within subsection (2) is entitled to carry on any activity which is a reserved legal activity.

¹⁰ <https://www.lawworks.org.uk/sites/default/files/files/In-housePracticeGuidance-web-ver1.2.pdf>

- (2) The bodies are—*
 - (a) a not for profit body,*
 - (b) a community interest company, or*
 - (c) an independent trade union.*
- (3) The transitional period is the period which—*
 - (a) begins with the day appointed for the coming into force of section 13, and*
 - (b) ends with the day appointed by the Lord Chancellor by order for the purposes of this paragraph.*
- (4) Different days may be appointed under subsection (3)(b) for different purposes.*
- (5) An order may be made under subsection (3)(b) only on the recommendation of the Board.*

Whilst intended to be 'transitional' this provision has been extended indefinitely. There are other provisions in the LSA (sections 105-108) that will apply should a licensing requirement be introduced at a later stage.

Appendix 3: Reserved activities

Reserved activities are those legal service activities which attract the greatest level of regulatory oversight, including the need to have in place a practising certificate. As explained elsewhere in this guidance, ‘special bodies’ or not-for-profit organisations are generally exempt from the restrictions on undertaking reserved activities, however individuals are not.

Under the 2019 Handbook the regulation of reserved activities is especially pertinent to freelancing (see elsewhere in this guidance) and in-house solicitors (see our dedicated in-house practice guidance).

Reserved activities

The types of legal activities which are reserved – and what comes within the scope of what is reserved - are discussed below.

The LSA lists reserved activities as:

- the ‘exercise of a right of audience’ (i.e. advocacy in most courts and *certain* tribunals);
- the ‘conduct of litigation’;
- (i.e. preparation of certain conveyancing instruments);
- probate activities;
- notarial activities; and
- the administration of oaths.¹¹

The statutory source of the restriction on ‘reserved’ activities is section 15(4) of the LSA. Section 15(4) LSA contains a restriction on undertaking ‘reserved’ activities, in particular contained in the phrase ‘part of employer’s business’. In practise, the phrase can be difficult to interpret.

Advocacy and ‘exercising a right of audience’

While the reservation applies to advocacy before the vast majority of courts it only applies to advocacy before certain tribunals which operate restrictive rights of audience. Courts and tribunals which do not restrict rights of audience include: the Employment Tribunal, Employment Appeals Tribunal, the First-tier Tribunal (Social Entitlement Chamber) and

¹¹ The LSA schedule 2 addresses the meaning/scope of ‘reserved’ activities in greater detail – see: www.legislation.gov.uk/ukpga/2007/29/schedule/2

claims allocated to the Small Claims Track in the County Court. Note that the First-tier Tribunal (Immigration) does restrict rights of audience¹².

There is a particular reason why the reservation does not apply to the First-tier Tribunal (Social Entitlement Chamber) and, according to the same rationale, claims allocated to the Small Claims Track in the County Court.

Social Entitlement Chamber

The First Tier Tribunal is listed as a court for the purposes of the LSA. But para 4(2) of Schedule 2 to the LSA provides that the definition of “conduct of litigation” for the purposes of reserved legal activity “does not include any activity ... in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity.”

Prior to the coming into force of the relevant LSA provisions, the legislation governing reserved legal activity was the Courts and Legal Services Act 1990. That Act contained restrictions on reserved legal activity which were similar to those now found in the LSA, but the Act went on to provide that, if a person was permitted by a specific court to have rights of audience or to conduct litigation in proceedings in that court, such activities would not constitute reserved legal activity.

Under the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, any person (whether lawyer or non-lawyer) may be appointed by a party as their “representative” to “represent that party in the proceedings” (rule 11(1)). Rule 11(5) clarifies that the activities such a person may undertake extend to “[a]nything permitted or required to be done by a party under these Rules, a practice direction or a direction ... except signing a witness statement.” As a result, subject to their appointment as a “representative,” any person (legally qualified or not) may carry out all litigation activities before the First-tier Tribunal (Social Entitlement Chamber). Since that state of affairs existed immediately prior to the coming into force of the LSA provisions, the proviso in LSA, Sch 2, para 4(2) operates such that any of those previously-permitted activities which would otherwise now be classed as “conduct of litigation” before a listed court are exempt from the definition of “reserved legal activity”.

¹² First-tier Tribunal (Immigration and Asylum Chamber) Rules, Part 2, Rule 10

Small Claims Track

Section 13 / Schedule 2 LSA 2007 restricts litigation and advocacy activity in connection with “listed” courts, including the County Court. However, as with the social security tribunal, Schedule 2 LSA contains grandfathering provisions that preserve the position that existed prior to the coming into force of section 13. Under practice rules for Small Claims actions any person (whether lawyer or non-lawyer) may be appointed by a party as their “representative”.

The ‘conduct of litigation’

As explained above, advocacy before the Employment Tribunal, Employment Appeal Tribunal and the First-tier (Social Entitlement Chamber) is not a reserved activity. The reservation on ‘conduct of litigation’ also does not apply to these tribunals. Note, however, that the ‘conduct of litigation’ in relation to claims allocated to the Small Claims Track in the County Court is reserved (This gives rise to the unsatisfactory position in respect of Small Claims in the County Court whereby freelancer acting under 10(2)(a) may undertake advocacy before the County Court *in respect of claims allocated to the Small Claims Track*, but as things currently stand should generally avoid undertaking the traditional work of solicitors in respect of those proceedings (i.e. ‘conducting litigation’).)

Given that in courts and other tribunals the ‘conduct of litigation’ is a restricted activity, it is important to be clear which activities are captured by the reservation and which fall outside its scope. Even in courts and tribunals in which the ‘conduct of litigation’ is reserved, a great many pro bono legal services can be provided to the public in respect of ongoing formal litigation – i.e., they do not come within the scope of ‘conduct of litigation’ and are therefore not a reserved activity. In practice the ‘conduct of litigation’ reservation operates quite narrowly (see below).

Litigation work which is not reserved activity

A significant amount of work *related* to formal proceedings falls outside the reservation – i.e., it is work which is not ‘ancillary’ to the conduct of litigation.

LawWorks considers that the writing of a ‘letter before action’, or any other step *prior* to commencing *formal proceedings*, would not amount to the ‘conduct of litigation’. Subject to any other applicable restriction, such activities are not ‘reserved’.

It is only once proceedings have commenced that litigation can be ‘conducted’.

Thereafter, the general thrust of relevant case law (see below) is that ‘ancillary functions’ – i.e., *formal steps* in the proceedings, such as the service of a Claim Form - come within the ambit of ‘conduct of litigation’ and are therefore a ‘reserved’ activity’. ‘Ancillary functions’

include activities such as the preparation of costs budgets and witness statements, interim applications and hearings, as well as any other formal step in proceedings.

In *Agassi v Robinson* [2006] 1 WLR 2126, it was held that a restricted view must be taken of the meaning of the phrase 'the right to conduct litigation', as section 20 of the Solicitors Act 1974 created a criminal offence for an unqualified person to act as a solicitor. In particular, paragraph 56 of the judgment indicates how the phrase should be interpreted:

"The word "ancillary" indicates that it is not all functions in relation to proceedings that are comprised in the "right to conduct litigation". The usual meaning of "ancillary" is "subordinate". A clue to what was intended lies in the words in brackets "(such as entering appearances to actions)". These words show that it must have been intended that the ancillary functions would be formal steps required in the conduct of litigation. These would include drawing or preparing instruments within the meaning of section 22 of the 1974 Act and other formal steps. It is not necessary for the purposes of this case to decide the precise parameters of the definition of "the right to conduct litigation". It is unfortunate that this important definition is so unclear. But because there are potential penal implications, its very obscurity means that the words should be construed narrowly. Suffice it to say that we do not see how the giving of legal advice in connection with court proceedings can come within the definition. In our view, even if, as the Law Society submits, correspondence with the opposing party is in a general sense "an integral part of the conduct of litigation", that does not make it an "ancillary function" for the purposes of section 28."

Following case law, the activities set out below do not amount to the 'conduct of litigation' and are therefore not 'reserved':

- The **drafting** of documents for submission to proceedings *prior* to formal issue, including pleadings (such as the Claim Form and Particulars of Claim) and other submissions – see *Ellis v Ministry of Justice*, alongside *Agassi*. In *Ellis* it was held at first instance that 'drafting alone' of documents *prior* to issue (without the formal step of filing) did not constitute the 'conduct of litigation' (a conclusion not disrupted by the Court of Appeal);
- **Legal advice** in respect of disputed matters, including ongoing formal issued proceedings (subject to any restriction concerning 'reserved instrument activities', see below);
- Except in limited circumstances, all **alternative dispute resolution** (ADR) activity, such as 'without prejudice' correspondence and/or negotiated settlements (face-to-face or otherwise) in respect of ongoing litigation. The exceptions are where ADR has been ordered by a court, including in any order for directions (note: usually courts order a stay of proceedings with the purpose of ADR not being expressly referred to. This alone would probably not be sufficient to bring ADR within the 'conduct of litigation'. However, any formal step taken to bring to an end to ongoing court litigation following settlement, such as an application

for a Tomlin Order or any other order bringing an end to the litigation, would constitute a formal step and, therefore, be a 'reserved' activity;

- **Correspondence** generally about the litigation, including the merits. This would include, for example, correspondence concerning a breach of a court order or the content of witness statements - that is, witness statements which have been formally served after proceedings have been formally issued, as the *preparation* of witness statements once proceedings have been formally issued is a 'reserved' activity.

Service of a Claim Form (including any cover letter) and/or service of any other court document, such as a witness statement, are reserved activities, as is formal acceptance. However, litigants in person are permitted to serve their own Claim Form (as well as engaging agents for this purpose).

For cases that apply *Agassi* see *PR, SS and TC v Secretary of State for the Home Departments* [2011] EWCA Civ 988 and *Ndole Assets Ltd v Designer M&E Services UK Ltd* [2017] EWHC 1148 (TCC).

Individuals should contact the SRA in the event that they are in any doubt about whether a particular piece of work is 'reserved' or 'non-reserved' activity.

'Reserved instrument activities'

Individuals, charities and not-for-profit organisations may require assistance with property matters, including advice and drafting of formal documents. Freelance solicitors should take care not to undertake 'reserved instrument activities' which are reserved under the LSA, unless under AIR 10(2)(b) or as a Sole Practitioner. However, as with the scope of 'conduct of litigation' it is helpful to be clear what legal work may come within or be outside the scope of 'reserved instrument activities'.

As to the scope of this reserved activity, the LSA Schedule 2 defines it as follows:

"5(1) "Reserved instrument activities" means—

(a) preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002 (c. 9);

(b) making an application or lodging a document for registration under that Act;

(c) preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales.

(2) But "reserved instrument activities" does not include the preparation of an

instrument relating to any particular court proceedings if, immediately before the appointed day, no restriction was placed on the persons entitled to carry on that activity.

(3) In this paragraph “instrument” includes a contract for the sale or other disposition of land (except a contract to grant a short lease), but does not include—

(a) a will or other testamentary instrument,

(b) an agreement not intended to be executed as a deed, other than a contract that is included by virtue of the preceding provisions of this sub-paragraph,

(c) a letter or power of attorney, or

(d) a transfer of stock containing no trust or limitation of the transfer.

(4) In this paragraph a “short lease” means a lease such as is referred to in section 54(2) of the Law of Property Act 1925 (c. 20) (short leases).”

As can be seen from section 5(1) the reservation covers a broad scope of activity.

Clearly, the filling-out of standard HM Land Registry forms - which give effect to the transfer of interests in land (such as a transfer of the whole of a registered title in TR1 form) or allow for property interests and charges to be entered on the Land Register (such as an application for charge registration in form K1) - will come within sub-paragraphs 5(1)(a) and (b).

In LawWorks’ view the reservation will capture the preparation of the full range of written documents which create, modify, transfer, extinguish, or otherwise ‘relat[e] to’ real personal property interests, unless specifically excluded. Such instruments would include, for example, leases (save for the short leases excluded under the chapeau to sub-paragraph 5(3)), deeds of covenant, deeds or contractual agreements creating easements. Further, given that the meaning of ‘instrument’ is not only confined to the creation of, and dealing with, legal rights, other written documents which might typically be considered merely administrative but which ‘affect the pecuniary position of parties’ will also come within the scope of the reservation. Any document which has significant implications for the exercise of property rights will be caught. Examples would be the preparation of the forms entering, removing, or cancelling unilateral notice on the Land Register (forms UN1, UN2, or UN3) restricting a legal owner’s dealing with that asset. Additionally, licenses come within the scope of the reservation even though, strictly speaking, they do not create property rights.

As a consequence of the above, LawWorks considers that only the property-related matters specifically excluded from the definition by virtue of sub-paragraph 5(3) can safely be undertaken as non-reserved activities.

The prudent course is to ensure that ‘unauthorised’ volunteers do not draft any document which creates, modifies, transfers, or extinguishes a property right, and also do not draft Land Registry standard form documents, lest they fall foul of the LSA regulatory regime. Further, volunteers should avoid providing legal advice on the terms of any proposed “instrument”. A rule of thumb might be that general advice on the type of instrument and what it achieves would not be preparation, but advice on the wording the instrument should include would do so. This is obviously a difficult area, and a cautious approach would be prudent given the uncertainty of scope of the LSA's application.

Courts in which the reservation applies

As well as 'instruments' relating to property, sub-paragraph 5(1)(c) refers to instruments 'relating to court proceedings in England and Wales.' The first thing to say about this aspect of the definition is that it is subject to the same proviso found in respect of the 'conduct of litigation' rules regarding courts before which restrictions did not exist immediately before the coming into force of the LSA provisions. That means that the preparation of instruments relating to proceedings in the First-tier Tribunal (Social Entitlement Chamber) remain excluded from the scope of 'reserved legal activity.'

As to proceedings before other courts and tribunals, in LawWorks' view the definition of 'instrument', i.e. a document itself that has some form of impact on a person's rights (even if only an effect on their pecuniary position), is not capable of capturing the drafting of pre-action, settlement or other correspondence during a dispute, the drafting of legal pleadings or submissions, or the settling of witness statements or other evidence. That is because such documents, despite being written and relating to court proceedings, are not properly defined as 'instruments' since they only advance arguments and/or record facts, rather than affect rights or interests. Of course, some of these documents may constitute the "conduct of litigation" in courts and tribunals to which the reservation applies. Consequently, documents which go beyond advancing arguments and/or recording facts, affecting rights or interests will be caught by the reservation.

Should solicitors have any doubt about whether a particular item of work is reserved we advise that they do not undertake such work and that they contact the SRA and/or seek independent advice.

Appendix 4: Registered Foreign Lawyers

Particular rules apply to Registered Foreign Lawyers 'RFLs'. The SRA's guidance is at: <https://www.sra.org.uk/solicitors/guidance/ethics-guidance/registered-foreign-lawyers/>.

In summary, Registered Foreign Lawyers (RFL) are permitted to undertake non-reserved activities in a pro bono context. They are also permitted to work on certain reserved matters, albeit ensuring that they are supervised by an authorised person and avoid formally undertaking the work themselves.

Unreserved work

RFLs are permitted to practise the law of their home country/state and advise on English and Welsh law, providing unreserved legal services. This can include:

- carrying out or supervising unreserved work (subject to any other restriction, such as the requirement to be OISC registered/supervised and/or acting through an OISC registered body – see below) that includes English and foreign legal work;
- carrying out or supervising foreign legal work, which is reserved to lawyers of RFLs home jurisdiction, provided RFLs are permitted to do this within the rules of their own profession.

Immigration work

In relation to immigration work, this can be undertaken through an authorised body or through a permitted body, i.e. a s.23 LSA 'special body', which is OISC registered to deliver these services to the public. This can include:

- undertaking advocacy before immigration tribunals;
- having conduct of, and prepare documents for, immigration tribunal proceedings (i.e. conduct litigation).

Reserved work

RFLs are permitted to undertake some reserved work, albeit only by assisting an authorised person, i.e., a solicitor of England and Wales, (who also takes responsibility for delivery of the legal services) and under the authorised person's close supervision.

The reserved work which RFLs are permitted to undertake is (Reg 9.4, AIR):

- "advocacy in chambers" in England and Wales under instructions given by a person who is authorised to do so (i.e., advocacy in private hearings – held in chambers – for example, in some family proceeding; albeit subject to the restriction on advocacy in the Higher Courts);
- "prepare court documents" (i.e., conduct litigation);
- "prepare instruments and the lodging of documents relating to the transfer or charge of land" (i.e., reserved instrument activities");

- “prepare papers on which to found or oppose a grant of probate, or a grant of letters of administration”;
- “prepare trust deeds disposing of capital if you also are eligible to act as a lawyer of England and Wales”.

Status of foreign lawyers

Under the SRA Code of Conduct for Solicitors, RELs and RFLs, RFLs must not hold themselves out or allow themselves to be held out by others as entitled to practise as a lawyer/solicitor of England and Wales. Therefore, their status as a RFL or non-registered foreign lawyer should be made clear to clients.

RFLs cannot practise on their own under AIR 10(2)(a) or (b).

Under the SRA’s Handbook there is no requirement that foreign lawyers register as RFLs.

Strictly speaking, foreign lawyers only need register as RFLs if they wish to conduct reserved immigration work on their own account (see above). Non-registered foreign lawyers cannot conduct reserved immigration work on their own account, hence in order to undertake this work they may only assist an authorised person, being directed/supervised in relation to this reserved work. Unregistered foreign lawyers may only undertake non-reserved immigration work if they are OISC registered.

Unregistered foreign lawyers can assist with reserved work, such as the conduct of litigation and advocacy (see the SRA’s guidance linked above), but must not formally conduct the work (as per above) and must be supervised. The SRA’s guidance indicates that any exercise of ‘rights of audience’ are exercised by RFLs under the supervision of an authorised person such as a solicitor or barrister.

Appendix 5: About LawWorks and LawWorks membership

LawWorks (the Solicitors Pro Bono Group) is a charity (working in England and Wales) which:

- **Promotes** and **supports** pro bono within the solicitors' profession and in law schools;
- Helps to **connect** those needing pro bono legal services with the pro bono volunteers and assistance they need;
- **Advocates** for policy change and the goal of access to justice for all.

With support from the Law Society, we work primarily with solicitors (firms and in-house teams), and also with law schools and law students, and other legal and non-legal volunteers and organisations. LawWorks has around 150 members including some of the largest City firms and International firms with an office in London, national, regional and local firms, in-house teams, law schools and charities.

The LawWorks Clinics Network

We support a growing network of 280 local independent pro bono advice clinics across England and Wales. We work with lawyers (LawWorks members and non-members), advice agencies, charities and others to establish or develop new clinics, and provide ongoing information and support, for clinic volunteers and coordinators.

Connecting charities with pro bono

Our Not-for-Profits programme facilitates the provision of free legal advice for smaller charities and not-for-profit organisations, supported by volunteer lawyers from among LawWorks' members. We provide free online training videos for charities, covering many of the common legal issues they face.

We also broker opportunities to provide longer-term pro bono assistance by matching small not-for-profit organisations with their own 'Honorary Counsel' to carry out health checks of documents and to be a point of contact for initial advice.

Supporting case work and representation

We support a number of 'secondary specialisation' projects to support the development of more 'in-depth' pro bono, in areas of social welfare law (e.g., bespoke casework and/or representation). This includes supporting firms and individual solicitors to provide representation at 1st-tier social security appeal tribunals, an unpaid wages' project, and (working with the charity Together for Short Lives for a project called 'Voices for Families'), to provide legal advice for parents and carers of children with life-limiting conditions.

A policy voice for pro bono

We also work to address barriers to justice and to provide a 'policy voice' for pro bono - for example, working with regulators to reduce barriers to pro bono, and working with our

members and professional bodies to influence policy on legal aid, court modernisation and other aspects of access to justice.

Pro bono embodies a commitment to access to justice and acting in the public interest. We champion public funding for legal aid, and for law centres and advice agencies.

LawWorks membership: enabling access to justice

By joining LawWorks you will be supporting our charitable work to encourage and support pro bono, and our work to highlight - and address - barriers to accessing justice. The financial contribution of our members is vital to our work.

Our annual membership fee provides membership for all the lawyers, staff and volunteers in the organisation, and gives access to our services and resources including:

- Our Not-for-Profits programme that connects pro bono solicitors with smaller charities needing legal advice. You receive researched and prepared cases, based on your area of interest and expertise, and we are always on hand to help;
- Our weekly news bulletin 'LawWorks Weekly' and a quarterly newsletter;
- Professional indemnity insurance which may at LawWorks discretion be able to cover pro bono work conducted as part of our programmes or with projects registered with LawWorks when insurance is not otherwise available);
- Legal and professional skills training from expert trainers (and online resources - including recordings of training sessions and associated materials);
- Networking opportunities, including roundtables and events;
- Recognition of pro bono work at the annual LawWorks Pro Bono Awards;
- The opportunity (if you wish) to support our work to influence positive policy change.

The membership fee depends upon the size of the firm (e.g., number of fee-earners based in England and Wales) - with other categories/criteria for in-house teams and organisations.

Membership brings no obligation - but by joining you will be supporting our work to support pro bono and enable access to justice.

Other ways to support LawWorks

Our work is funded by a mixture of membership fees, donations, and grants. None of this funding is guaranteed long term. If you are able to support LawWorks – such as fundraising, making a donation, sponsorship (e.g., for our Annual Awards) or in-kind support - please do get in touch. If you would like to make a donation, please visit our website:

<https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/donate-or-fundraise>

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