

# advocate



## THE COMMERCIAL COURT AND LONDON CIRCUIT COMMERCIAL COURT PRO BONO SCHEME

### SCHEME PROTOCOL

#### The Scheme

1. This Scheme has the support of Mr Justice Teare, the Judge in Charge of the Commercial Court, and HH Judge Pelling QC, the Judge in Charge of the London Circuit Commercial Court (**LCCC**) and (together, the **JICs**).
2. The Scheme is a collaboration between Advocate, the Commercial Court, the LCCC and COMBAR.
3. The aim of the Scheme is to provide pro-bono assistance and representation for litigants in person (**LIPs**) appearing in applications to be heard in the Commercial Court or the LCCC. It is intended that this assistance will be limited to applications with a time estimate of one day or less, and not available for longer applications or full trials.

#### Operation of the Scheme

4. “**Volunteer Advocate**” means a barrister who has post-pupillage commercial experience and who is a member of COMBAR, and who has indicated their willingness to make themselves available to represent LIPs at short notice in applications before the Commercial Court or LCCC.
5. The scheme will operate as follows:
  - a. **COMBAR** will compile, provide to Advocate and maintain a mailing list of Volunteer Advocates (the **Volunteer Mailing List**). The list will be kept up to date by COMBAR, which will circulate details of the scheme and an invitation to join the mailing list at the start of every term (or at such other intervals as COMBAR considers appropriate).
  - b. A copy of the explanatory note at Appendix 1 to this Protocol (the **Explanatory Note**) will be sent to all parties issuing applications in the Commercial Court and LCCC (whether by CE File, by Post or at the Counter). Where the party

issuing the application is aware that the respondent to the application is an individual and is or may be unrepresented, it should provide a copy of the Explanatory Note to the respondent when serving the application.

- c. The Explanatory Note sets out the full details as to how the Scheme may be accessed, including the relevant contact details for Advocate. The Explanatory Note makes clear that:
    - i. LIPs should contact Advocate within 24 hours of receipt requesting an application form to access the scheme
    - ii. Upon receipt of such email, Advocate will send the form and relevant information about what documents are required and
    - iii. It is the LIP's responsibility to ensure a copy of the application bundle and any other relevant papers are provided to Advocate in sufficient time before any hearing.
  - d. Upon contacting Advocate the LIP will be asked to complete a short application form, giving details of (a) the nature of the application for which assistance is sought; (b) the assistance that is likely to be required of the Volunteer Advocate; (c) an indication of the volume of papers (by reference to the hearing bundle, if available); and (d) details of the LIP's means.
  - e. The Application Form will be reviewed by one of a panel of reviewers provided by COMBAR, who will (a) confirm that the application is appropriate for the scheme and (b) prepare a short summary of the application for circulation to the Volunteer Mailing List by Advocate.
  - f. Volunteer Advocates should respond by return, indicating their willingness to act for the LIP. Cases will be allocated on a 'first come first served' basis (save that for a hearing in a case in which a Volunteer Advocate has previously been instructed under the Scheme, that Volunteer Advocate will be given first refusal).
  - g. Where a Volunteer Advocate has agreed to take on the case, Advocate will then arrange to have the papers provided by the LIP sent to the relevant barrister at their Chambers or other workplace.
6. The full scheme will be piloted for an eighteen-month period from 1 October 2020. The Scheme will be reviewed by the JICs, Advocate and COMBAR together following the pilot, to determine whether it should be maintained and what, if any, changes should be made thereto.
  7. Copies of this Scheme Protocol and the Explanatory Note will be provided to judges sitting in the Commercial Court/LCCC as appropriate.

## Access to the Scheme

8. Access to the Scheme will be limited to LIPs appearing before the Commercial Court or the LCCC in applications with a time estimate of one day or less. It does not apply to trials or other final hearings (whatever their time estimate).
9. The Scheme is designed to provide legal assistance and representation to LIPs who might otherwise not be able to afford it. The Scheme will operate a means test, to be administered by Advocate.
10. It is the responsibility of the LIP:
  - (a) to contact Advocate and inform them of their desire to access assistance under the Scheme;
  - (b) to provide Advocate with the application bundle for the hearing and any other papers that they consider to be relevant; and
  - (c) to ensure that Advocate has been provided with all relevant and up to date details of the hearing.

## Role of the Volunteer Advocates

11. The Scheme will be open to all Volunteer Advocates as defined in paragraph 4 above and will operate as set out in paragraph 5 above.
12. Volunteer Advocates will be instructed under the licensed access auspices of Advocate, the working name for the Bar Pro Bono Unit.
13. Self-employed barristers are insured under their own policy with the BMIF. Employed barristers are insured via Advocate's policy with the BMIF.
14. It is for Volunteer Advocates to determine for themselves whether it is appropriate for them to volunteer, having regard to: (a) the volume of papers; (b) the likely preparation time involved; (c) the date of the hearing; (d) whether the hearing is in the Commercial Court or LCCC; and (e) the Volunteer Advocate's experience.
15. Once a Volunteer Advocate has been instructed, this constitutes a professional commitment, and must be treated as such. Participants should only cease to act and return instructions in the circumstances provided for in the BSB Code of Conduct, and in such circumstances the Volunteer Advocate should inform Advocate as soon as possible that they are unable to act. Where practical, Advocate will then approach a second Volunteer Advocate to respond to the request for assistance.
16. Once a Volunteer Advocate has been instructed, their responsibilities will be the same as for preparing for any application, save that the instruction will be undertaken on a pro-bono basis. In particular:

- (a) The Volunteer remains subject to the usual obligations as to the filing of skeleton arguments as set out in the Commercial Court Guide or Circuit Commercial Court Guide as appropriate (although Judges will have regard to the fact that the Volunteer Advocate may not necessarily have had sufficient time to prepare and will make allowances for that fact);
  - (b) The Volunteer Advocate will be responsible for taking instructions directly from the LIP. After the initial contact, Advocate will not ordinarily act as intermediary between the LIP and the Volunteer Advocate; and
  - (c) The Volunteer Advocate may wish to consider whether it is appropriate for the LIP to represent themselves in respect of part of a hearing (for example, where the Volunteer Advocate has been unable to obtain proper instructions or may be concerned about misleading the Court).
17. The Volunteer Advocate's obligations will be limited to the hearing in question. While the Volunteer Advocate may agree to assist with the consequential matters arising from the hearing (for example, agreeing the terms of the draft Order), they are not obliged to do so.
18. At the end of the hearing, the Volunteer Advocate will be asked to complete a Concluding Letter out the nature of the hearing, the work undertaken, the directions given by the Judge at the hearing, and any advice given by the Volunteer Advocate. A copy of the form should be given to the LIP and a further copy should be emailed to [caseworker@weareadvocate.org.uk](mailto:caseworker@weareadvocate.org.uk).

### **Additional assistance on the day**

19. It is possible that the unrepresented person will be accompanied by a "McKenzie friend". The Volunteer Advocate is asked to respect this choice, but in the event of difficulty or complexity to raise the matter with the judge listed for the hearing (or, in the case of hearings before the LCCC, the Judge in Charge of the LCCC).
20. Where the matter is of a complexity or nature that the assistance of a solicitor (not undertaking advocacy) as well as of an advocate is necessary, the Volunteer Advocate should not proceed with the instruction but should contact Advocate to request a solicitor through Pro Bono Connect. If the Volunteer Advocate is in any doubt he or she should refer to Advocate before proceeding further.

### **Further assistance after the day of the hearing**

21. Subject to paragraph 25 below, the Scheme does not extend to ongoing legal advice or further hearings or appeals. LIPs will be notified by the Volunteer Advocate about the availability of ongoing legal assistance offered by Advocate under its usual arrangements and where the application forms are available.

22. When completing the Concluding Letter referred to at paragraph 18 above, the Volunteer Advocate should also inform Advocate of any likely further assistance required. In so doing, the Volunteer Advocate:
- (a) Should note any relevant observations made by the Court at the hearing;
  - (b) Is free to express any view to Advocate about the merits of the LIP's position and the nature of any further assistance required; and
  - (c) Should indicate if he or she would like to be given first refusal on any further hearings in the same matter.
23. The LIP should send any completed application form in relation to further assistance to Advocate at the National Pro Bono Centre.
24. Any further application for assistance will be considered by Advocate in accordance with its usual procedures (and not as an application under the auspices of the Scheme): i.e. it will be reviewed by an Advocate reviewer and placed with a panel member accordingly should it pass that stage.
25. By way of exception to that, in the case of further hearings in the Commercial Court/LCCC falling under the scope of this Scheme, the LIP may make a further application to Advocate under this Scheme (in which the LIP may request the same Volunteer Advocate, although the latter shall be under no obligation to accept).

### Comments, concerns or complaints

26. If an LIP or a Volunteer Advocate wishes to raise any comment, concern or complaint he or she should, in the first instance, write to Advocate (although Volunteer Advocates may also wish to share their comments, concerns or complaints with COMBAR, at their discretion).
27. Advocate will monitor various aspects of the Scheme and may request assistance in this from COMBAR.

### Reporting

28. The Commercial Court and LCCC will provide six monthly reports to Advocate and COMBAR detailing:
- (a) How many volunteers are listed;
  - (b) How many requests for assistance have been submitted;
  - (c) How many requests for assistance have been accepted;

(d) The outcome of the accepted requests for assistance; and

(e) The amount of time each request has taken for the volunteer.

29. The Commercial Court and LCCC will provide a yearly report to Advocate and COMBAR on the impact of the scheme on the court process by consulting court staff and/or the Judiciary hearing these cases, including with reference to:

(a) Time saved by volunteer involvement;

(b) Cost of the time saved; and

(c) Anecdotal comments from the Judiciary or court staff.

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