



The Bar Council

Employed barristers: working *pro bono*

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| Purpose: | To assist employed barristers to understand the conditions under which they can undertake work <i>pro bono</i>. |
| Overview: | Relevant Scope of Practice Rules; Insurance requirements; practical considerations; example scenarios. |
| Scope of application: | All practising employed barristers. |
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Introduction and Summary

1. The *pro bono* contribution of the employed Bar is an important part of the impressive *pro bono* contribution of the whole Bar. It deserves appropriate encouragement. But questions have sometimes arisen about the conditions under which employed barristers can supply legal services *pro bono*: whether that is at the direction of their employer, independently in their own time, or in Legal Advice Centres.
2. In essence, as an employed barrister you can provide your services *pro bono*, provided you are acting within your authorised Scope of Practice (which will include acting as an employee/ manager in the capacity in which you are employed/ undertake management); and provided also you have ensured, in compliance with BSB Handbook rC76.1, that there is adequate insurance covering the legal services that you supply to the public.

3. This Guidance Note sets out in further detail the circumstances in which and conditions upon which employed barristers can supply such services. It is structured as follows:
 - (1) First, it considers the meaning of *pro bono* legal services, and which supplies of *pro bono* legal services constitute “practice as a barrister” (paragraphs 5 - 7).
 - (2) Second, it considers both generally (paragraphs 8 - 9) and in relation to each type of employed barrister/ manager of a regulated entity, the limitations upon and conditions of authorised Scopes of Practice; i.e.:
 - (a) Scope of Practice as manager of a BSB entity or as an employed barrister (BSB entity) (paragraphs 10 - 13); or
 - (b) Scope of Practice as manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body) (paragraphs 14 - 15); or
 - (c) Scope of Practice as an employed barrister (non-authorised body) (paragraphs 16 - 17); and
 - (d) the special Scope of Practice authorisation – applicable to all registered barristers – to provide legal services at a Legal Advice Centre (paragraphs 18 - 22).
 - (3) Third, it considers, in connection with the supply of *pro bono* legal services, the insurance obligations of employed barristers/ managers of regulated entities, both generally (paragraph 25) and
 - (a) as manager of a BSB entity or as an employed barrister (BSB entity) (paragraph 26 - 28); or
 - (b) as manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body) (paragraphs 29 - 31); or
 - (c) as an employed barrister (non-authorised body) (paragraphs 32 - 34); or
 - (d) when providing legal services at a Legal Advice Centre (paragraphs 35 - 38).
 - (4) Finally, it gives illustrative scenarios examining issues and difficulties that can arise in practice (paragraphs 39 - 44).
4. This Guidance Note applies only to employed barristers registered (and having a practicing certificate) in that capacity. It does not apply to unregistered barristers.

PRO BONO LEGAL SERVICES

5. By work done *pro bono* is meant work done voluntarily by the barrister without charge to the ultimate client. The Bar Council has endorsed the *Pro Bono Protocol*, which states that “*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*”; and all barristers are encouraged to describe their work as *pro bono* only if it meets that description.

The supply of legal services *pro bono* involves practice as a barrister.

6. Rule rS9 in the Scope of Practice Rules (part 3B of the Handbook) provides (so far as relevant to employed barristers) that:

“For the purposes of this Handbook, you practise as a barrister ... if you are supplying legal services and:

.1 you are an individual and you hold a practising certificate; or

.2 you hold yourself out as a barrister ... or

.3 ... or

.4 you act as a manager of, or have an ownership interest in, an authorised (non-BSB) body and as such you are required by the rules of that body’s Approved Regulator to hold a practising certificate issued by the Bar Standards Board (as the case may be).

It follows therefore that, if you hold a practicing certificate, the supply of any legal services, even *pro bono*, does involve practise as a barrister.

Some free advice does not involve the supply of a legal service

7. However in some circumstances the giving of legal advice for free will not involve the supply of legal services. The Handbook definition of “legal services” excludes (among other things)

“e) giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable benevolent or philanthropic institution; ...”

Those activities therefore fall wholly outside the scope of regulated practice. There is no requirement to ensure that there is insurance coverage in respect of them. But the exception is likely to be narrowly construed: for example, it is probable that the friend or relative referred to must be a fairly close friend or relative, not a mere acquaintance or remote cousin.

SCOPE OF PRACTICE AS AN EMPLOYED BARRISTER, OR AS MANAGER OF A REGULATED ENTITY OR BODY.

8. In relation to regulated practice involving the supply of legal services, Rule rS16 of the Scope of Practice Rules provides (so far as relevant to employed barristers) that:

“You may only carry on reserved legal activities or supply other legal services in the following capacities:

.1 ...;

.2 ...;

.3 as a manager of a BSB entity or as an employed barrister (BSB entity), subject to the limitations imposed by Section 3.B5;

.4 as a manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body), subject to the limitations imposed by Section 3.B6;

.5 as an employed barrister (non-authorised body), subject to the limitations imposed by Section 3.B7;

.6 ...”

9. A “manager” in this context means:

“a) a member of an LLP;

b) a director of a company;

c) a partner in a partnership; or

d) in relation to any other body, a member of its governing body.”

See the definition in Part 6 of the Handbook.

Scope of practice as manager of a BSB entity or as an employed barrister (BSB entity)

10. So far as concerns managers of a BSB entity and barristers employed by such an entity, the relevant Scope of Practice Rules (in Section 3.B5) are Rules rS31 and rS32:

“rS31

Rules rS32 and rS33 below apply to you where you are acting in your capacity as a manager of a BSB entity or as an employed barrister (BSB entity).

rS32

You may only supply legal services to the following persons:

.1 the BSB entity; or

.2 any employee, director, or company secretary of the BSB entity in a matter arising out of or relating to that person's employment;

.3 any client of the BSB entity;

.4 if you supply legal services at a Legal Advice Centre, clients of the Legal Advice Centre; or

.5 if you supply legal services free of charge, members of the public."

11. But note that rS32 *only* applies where *you are acting in your capacity* as a manager of a BSB entity or as an employed barrister (BSB entity): see rS31. If you are acting outside that capacity, or in a different capacity, rS32 does not provide any authorisation to supply legal services.
12. In the view of the Ethics Committee, the implication of rS31 is that if you – being a manager of a BSB entity or as an employed barrister (BSB entity) – provide *pro bono* legal services in some other capacity, e.g.
 - in your personal capacity (e.g. your own time); or
 - in circumstances where the BSB entity has made clear it that it will not be responsible for the work done *pro bono* (such that you could not be regarded as acting in the relevant capacity); or
 - at a Legal Advice Centre without the knowledge or authority of the BSB entity, *then you will be acting beyond the scope of practice authorised by rS32*. rS32 itself only applies when you are acting with the authority of and on behalf of the BSB entity.
13. However, working at a Legal Advice Centre is the subject of a special dispensation, explained at paragraphs 18-19 below.

Scope of practice as manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body)

14. Similar Rules apply in relation to barrister-managers or employed barristers of an authorised (non-BSB) body – typically, a law firm. See, in Section 3.B6, Rules rS35 - rS37:

"rS35

Rules rS36 and rS37 apply to you where you are acting in your capacity as a manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body).

rS36

You may only supply legal services to the following persons:

- .1 the authorised (non-BSB) body;**
- .2 any employee, director or company secretary of the authorised (non-BSB) body in a matter arising out of or relating to that person's employment;**
- .3 any client of the authorised (non-BSB) body;**
- .4 if you provide legal services at a Legal Advice Centre, clients of the Legal Advice Centre; or**
- .5 if you supply legal services free of charge, members of the public.**

rS37

You must comply with the rules of the Approved Regulator or licensing authority of the authorised (non-BSB) body."

15. Again, it is clear from rS35 that rS36 only applies when you are acting *in the specified capacity*. The view taken by the Ethics Committee is that, when providing services, including *pro bono* services, you will only be acting in that capacity when you do so with the authority of, and on behalf of, the relevant authorised (non-BSB) body (e.g. your law firm).

Scope of practice as an employed barrister (non-authorised body)

16. Similar rules govern the scope of practice of barristers employed by a "non-authorised body"; typically those employed in government, commerce or industry. See, in Section 3.B7, Rules rS38 - rS39:

"rS38

Rule rS39 applies to you where you are acting in your capacity as an employed barrister (non-authorised body).

rS39

Subject to s. 15(4) of the Legal Services Act 2007¹, you may only supply legal services to the following persons:

- .1 your employer;**
- .2 any employee, director or company secretary of your employer in a matter arising out of or relating to that person's employment;**
- .3 if your employer is a public authority (including the Crown or a Government department or agency or a local authority), another public authority on behalf of which your employer has made arrangements under statute or otherwise to supply any legal services or to perform any of that other public authority's functions as agent or otherwise;**
- .4 if you are employed by or in a Government department or agency, any Minister or Officer of the Crown;**
- .5 if you are employed by a trade association, any individual member of the association;**
- .6 if you are, or are performing the functions of, a Justices' clerk, the Justices whom you serve;**
- .7 if you are employed by the Legal Aid Agency, members of the public;**
- .8 if you are employed by or at a Legal Advice Centre, clients of the Legal Advice Centre;**
- .9 if you supply legal services free of charge, members of the public; or**
- .10 if your employer is a foreign lawyer and the legal services consist of foreign work, any client of your employer."**

17. Again, in order to fall within Rule rS39, you must be acting *in your capacity as an employed barrister* i.e. with the authority and on behalf of your employer. (You can, of course, only provide legal services (whether *pro bono* or otherwise) to those specified, and subject to the conditions set by that Rule.)

Scope of practice: Provision of legal services at a Legal Advice Centre (including the Free Representation Unit (FRU) and Advocate (formerly the Bar Pro Bono Unit))

¹ This subsection provides, in relation to reserved legal activities, that an employer (P) does not carry on such activities by virtue of an employee (E) carrying them out "in E's capacity as an employee of P", unless the provision of such services to the public or a section of the public (with or without a view to profit) is part of P's business.

18. In addition to the Scope of Practice authorisations set out above, *all* registered barristers holding a practice certificate may provide legal services at Legal Advice Centres, regardless of the capacity in which they act - see the Guidance to rS41 at gS9 – but always subject to the following Rules.

“rS41

You may supply legal services at a Legal Advice Centre on a voluntary or part time basis and, if you do so, you will be treated for the purposes of this Handbook as if you were employed by the Legal Advice Centre.

rS42

If you supply legal services at a Legal Advice Centre to clients of a Legal Advice Centre in accordance with Rule rS41:

.1 you must not in any circumstances receive either directly or indirectly any fee or reward for the supply of any legal services to any client of the Legal Advice Centre other than a salary paid by the Legal Advice Centre;

.2 you must ensure that any fees in respect of legal services supplied by you to any client of the Legal Advice Centre accrue and are paid to the Legal Advice Centre, or to the Access to Justice Foundation or other such charity as prescribed by order made by the Lord Chancellor under s.194(8) of the Legal Services Act 2007; and

.3 you must not have any financial interest in the Legal Advice Centre.”

19. To fall within this authorisation, you can only supply services at the Legal Aid Centre on a voluntary *or* part time basis. (If you work full-time or in a paid capacity at a Legal Advice Centre, it is very likely that you will be considered an employee of the Legal Advice Centre; and relevant authorisation to supply legal services may exist under Rule S39.8.)

20. The term "Legal Advice Centre" is defined in the Handbook as follows:

“... a centre operated by a charitable or similar non-commercial organisation at which legal services are habitually provided to members of the public without charge (or for a nominal charge) to the client and:

a) which employs or has the services of one or more solicitors conducting work pursuant to rule 4.16 of the SRA Practice Framework Rules 2011; or

b) which has been and remains designated by the Bar Standards Board as suitable for the employment or attendance of barristers subject to such conditions as may be imposed by the Bar Standards Board in relation to insurance or any other matter whatsoever.”

21. Rule 4.16 of the SRA Practice Framework Rules 2011, referred to in part a) of the definition of Legal Advice Centre, is no longer in force, having been superseded by their new SRA Standards and Regulations which have no equivalent provision. In the absence of amendment to the Handbook definition, the BSB has confirmed that the substance of the former rule 4.16 should be followed. Rule 4.16 stated that:

“If you are employed by a law centre or advice service operated by a charitable or similar non-commercial organisation you may give advice to and otherwise act for members of the public, provided:

- (a) no funding agent has majority representation on the body responsible for the management of the service, and that body remains independent of central and local government;*
- (b) all fees you earn and costs you recover are paid to the organisation for furthering the provision of the organisation’s services;*
- (c) the organisation is not described as a law centre unless it is a member of the Law Centres Federation; and*
- (d) the organisation has indemnity cover in relation to the legal activities carried out by you, reasonably equivalent to that required under the SRA Indemnity Insurance Rules.*

22. In summary, the legal advice centre must have the services of at least one solicitor conducting their work under the conditions specified in the preceding paragraph, and must have professional indemnity insurance in place; or must have been designated as suitable by, and must be operating under the conditions imposed by, the Bar Standards Board (including in relation to insurance).

23. As regards the Free Representation Unit (FRU) and Advocate (formerly the Bar Pro Bono Unit), although they may not meet the requirements of a "Legal Advice Centre" as defined in the Handbook, the BSB has now (by letters dated 25 April 2023 and 6 April 2023, respectively) waived any restriction in Rules rS9, rS16, rS31–rS32, rS35–rS37 or rS38–rS39 which might otherwise inhibit employed barristers in undertaking *pro bono* work through these bodies.

24. The Bar Council is not aware that the BSB has designated any other legal advice centres as suitable for the employment or attendance of barristers, for the purposes of sub-paragraph b) of the Handbook definition. Barristers considering working at a legal advice centre other than FRU or Advocate must therefore consider the requirements of sub-paragraph a) of the definition, and satisfy themselves of the matters set out in paragraphs 20 to 22 above.

INSURANCE OBLIGATIONS OF EMPLOYED BARRISTERS/ MANAGERS OF REGULATED ENTITIES.

25. Under rC76.1 *all* registered barristers must:

“ensure that you have adequate insurance (taking into account the nature of your practice) which covers all the legal services you supply to the public; ...”

This requirement plainly extends to legal services supplied to members of the public *pro bono*; and therefore personally obliges all barristers giving such services to ensure that work done or supplied to members of the public will be covered by insurance.

Insurance: Manager of a BSB entity or as an employed barrister (BSB entity)

26. Rule rC76.2, Guidance at gC114, and Notices issued under Rule 76 specify minimum terms of insurance cover for BSB entities, and oblige managers of such entities to have put in place adequate insurance on such terms (or better) covering the legal services it provides. However gC113 makes clear that:

“Where you are working in a BSB entity, you will satisfy the requirements of Rule rC76.1 so long as the BSB entity has taken out insurance, which covers your activities.”

27. Work done in your capacity as manager of a BSB entity or as an employed barrister (BSB entity) may be done *pro bono* for a client of the BSB entity; for an employee etc. of the BSB entity in relation to that person’s employment; at a Legal Advice Centre for clients of the Legal Advice Centre; or free of charge to members of the public: see rS32. Provided that such work is authorised by and done on behalf of the BSB entity, it is very likely that any claims arising from it will be covered by the insurance taken out by the BSB entity.

28. However, if you provide *pro bono* legal services to members of the public while acting outside that capacity, the insurance put in place by the BSB entity is unlikely to cover those services. Thus, if without the knowledge and consent of your employer you supply *pro bono* legal services at a Legal Advice Centre pursuant to Rules rS41 and rS42, you will have to ensure that separate insurance is in place to cover those services. This is considered further below: see paragraphs 35-38.

Insurance: Manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body)

29. Guidance at gC115 specifies that:

“Where you are working in an authorised (non-BSB) body, the rules of the approved regulator of that body will determine what insurance the authorised (non-BSB) body must have.”

30. Work done in your capacity as manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body) may be done *pro bono* for a client of the authorised non-BSB body; for an employee etc. of the authorised non-BSB body in relation to that person’s employment; at a Legal Advice Centre for clients of the Legal Advice Centre; or free of charge to members of the public: see rS32. Provided that such work is authorised by and done on behalf of the authorised non-BSB body, it is very likely to be covered by the insurance taken out by the authorised non-BSB body.
31. However if you – being a manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body) – provide *pro bono* legal services to members of the public while acting outside that capacity, the insurance put in place by the authorised non-BSB body is unlikely to cover those services. Thus, if without the knowledge or consent of your employer you supply *pro bono* legal services at a Legal Advice Centre pursuant to rS41 and rS42, you will, to comply with rC76.1, have to ensure that separate insurance is in place to cover those services. This is considered further below: see paragraphs 35-38.

Insurance: employed barrister (non-authorised body)

32. Guidance at gC116 specifies:

“Where you are working as an employed barrister (non-authorised body), the rule does not require you to have your own insurance if you provide legal services only to your employer. If you supply legal services to other people (to the extent permitted by the Scope of Practice and Authorisation, and Licensing Rules set out at Section S.B) you should consider whether you need insurance yourself having regard to the arrangements made by your employer for insuring against claims made in respect of your services. If your employer already has adequate insurance for this purpose, you need not take out any insurance of your own. You should ensure that your employer’s policy covers you, for example, for any pro-bono work you may do.”

33. This Guidance emphasises that the requirement in rC76.1, to ensure that you have adequate insurance covering all the legal services you supply to members of the public, is a personal and non-delegable one. Thus if, in accordance with rS39 and in your capacity as an employed barrister (i.e. authorised to act by and on behalf of your employer), you supply legal services *pro bono*:²

² It is not thought likely that a public-authority-employed barrister will undertake in that capacity *pro bono* work for another public authority, or for a Minister or Officer of the Crown; or that a barrister who is or is performing the functions of a Justices clerk will undertake in that capacity *pro bono* work for the Justices he or she serves.

- to an employee etc. of your employer in relation to that person's employment; or
- if you are employed by a trade association, to an individual member of the association; or
- if you are employed by the Legal Aid Agency, to members of the public; or
- if you are employed by or at a Legal Advice Centre, to clients of the Legal Advice Centre; or
- free of charge to members of the public; or
- if your employer is a foreign lawyer and the legal services consist of foreign work, to any client of your employer

you will need to consider whether, having regard to any insurance your employer may already have against claims made in respect of your services, you yourself need to obtain insurance, to meet the requirement in rC76.1.

34. Guidance at gC116 (final sentence) highlights the possibility that an employer's own insurance arrangements may not adequately protect against claims arising from *pro bono* work. Where you provide *pro bono* services in your capacity as an employed barrister (i.e. authorised to act by and on behalf of your employer), it is at least possible that your employer's insurance arrangements might give cover for such work. But it is highly unlikely that they would cover in respect of *pro bono* legal services supplied while acting outside that capacity. Thus, if you supply *pro bono* legal services at a Legal Advice Centre pursuant to rS41 and rS42 without the knowledge or consent of your employer, you will have to ensure that separate insurance is in place to cover those services see paragraphs 35-38 below.

Insurance: legal services supplied at a Legal Advice Centre (including through FRU and Advocate)

35. Where you supply legal services at a Legal Advice Centre pursuant to rS41 and rS42, rC76.1 obliges you to ensure that there is in place adequate insurance covering all services – including *pro bono* services, which they are almost certain to be – that you supply there. It is not necessary that that should be a personal insurance: it is sufficient that the Legal Advice Centre itself has adequate insurance in respect of claims arising from the services which are provided by those working at it.
36. It is believed that all Legal Advice Centres do in fact have such insurance in place, but it is the responsibility of barristers working in one to ensure that it does.

The Free Representation Unit (FRU) and Advocate (formerly the Bar Pro Bono Unit)

37. The Bar Mutual Indemnity Fund (BMIF) has confirmed that it insures the Free Representation Unit (FRU) and Advocate (formerly the Bar Pro Bono Unit) as Legal Advice Centre Members; but also that it has not and will not accept other Legal Advice Centres as Members.
- (1) The BMIF's Rule 10 defines a "Free Legal Advice Centre" as "The Bar Pro Bono Unit and the Free Representation Unit".

- (2) The BMIF's Terms of Cover include within the definition of "Insured" the following:

"(iii) Where the Member is a Free Legal Advice Centre, the Employed Barristers providing Legal Services through that Free Legal Advice Centre;"

Therefore any Employed Barristers providing legal services through FRU or Advocate will be "Insureds".

- (3) Clause 8 of the Terms of Cover (headed "Extended Indemnity Period for Free Legal Advice Centres") provides as follows:

"8.1 In respect of Free Legal Advice Centres, Bar Mutual shall indemnify any Employed Barrister providing Legal Services through a Free Legal Advice Centre to the extent of the Limit of Cover in respect of Claims that are made against the Employed Barrister during the period up to the sixth anniversary of the end of the Period of Insurance arising out of any acts or omissions giving rise to Civil Liability that occurred prior to the end of the Period of Insurance.

8.2 Bar Mutual shall be entitled to require the payment of such additional contribution from the Free Legal Advice Centre as it sees fit in consideration for the indemnity described in clause 8.1."

- (4) The term "Employed Barrister" has the same meaning in the Terms of Cover as in the Handbook i.e.

"a) an employed barrister (authorised non-BSB body); or

b) an employed barrister (BSB entity); or

c) an employed barrister (non-authorised body)"

(NB Managers of BSB entities and of authorised (non-BSB) bodies are not included/ covered.)

- (5) The term "Limit of Cover" is defined as £500,000 each and every claim or "such other sum or sums (if any) as may be set out in the Cover Note in excess of the Deductible". The "Deductible" is also defined by reference to the Cover Note. Therefore if you volunteer at FRU or Advocate you will be covered up to the limit of £500,000 each and every claim (unless another limit appears in that organisation's Cover Note). Unless the *pro bono* work to be undertaken is of a highly unusual kind, this level of cover should be sufficient cover to meet your obligation under Rule rC76.1.
- (6) Two additional points should be noted:

- (a) If you volunteer through FRU or Advocate you should satisfy yourself of (a) the Limit of Cover and (b) the amount of any Deductible, to ensure that the cover available will be sufficient to satisfy your obligation under Rule C76.
- (b) There will be no contractual insurance relationship between any employed barristers working at FRU or Advocate and the BMIF (since the contract of insurance will be between BMIF and the Legal Advice Centre as its member); but Clause 8.1 ought to be enforceable against the BMIF under the Contracts (Rights of Third Parties) Act 1999; and that should therefore satisfy the personal obligation under Rule rC76.1.

Other Legal Advice Centres

38. If you volunteer at a Legal Advice Centre other than FRU or Advocate you should ensure that it has adequate insurance to meet your Rule rC76.1 obligations. In the unlikely event that it does not, you should consider whether you need to obtain additional insurance for yourself.

SOME EXAMPLE SCENARIOS

Scenario 1

39. You intend to advise a friend or neighbour who has a legal problem. You have not obtained the consent or authority of your employer to do so. Is this permitted?

If you advise your friend for free, you will not be supplying any legal service – see paragraph 7 above – and will be acting entirely outside regulated practice. There is therefore no regulatory objection to your doing so. (However, if you use working hours to do so, you may be breaching your contract of employment, if it imposes an obligation to serve the employer exclusively during those working hours.) Note, you will also have no insurance cover, if your advice turns out to be mistaken.

If however you have agreed to charge your friend a nominal fee for the advice, you *will* be providing a legal service, since this is outside the exclusion from legal services referred to in paragraph 7 above. Since you will not be doing so in your capacity as an employed barrister, this will be outside the scope of your permitted practice, and you will be in breach of the prohibition in Rule rS16 (see paragraph 8 above). Further, the work will not be covered by insurance, and you will be in breach of Rule rC76.1.

If you intend to advise your neighbour, who is not a friend (or relative), you will be providing a legal service, since this is also outside the exclusion from legal services referred to in paragraph 7 above. Since you will not be doing so in your capacity as an employed barrister, this will be outside the scope of your permitted practice, and you will be in breach of the prohibition in Rule rS16 (see paragraph 8 above). Further, the work will not be covered by insurance, and you will be in breach of Rule rC76.1.

Scenario 2

40. You intend to advise and draft documents for a local business, without charge. You seek permission from your employer, which raises no objection, but makes clear that in doing so you will not be acting as its employee and it is not to be held responsible for the work which you do. Are you permitted to advise and draft the documents?

No. Your employer has made clear that you will not be acting in your capacity as an employed barrister, and so this work will be outside the scope of your permitted practice, and you will be in breach of the prohibition in Rule rS16 (see paragraph 8 above). Further, the work is unlikely to be covered by any insurance, and so you will be in breach of Rule rC76.1.

Scenario 3

41. You volunteer on a part time basis at a local Legal Advice Centre, giving housing advice at weekends without the knowledge or authority of your employer and without any outward connection to the employer. Is this permitted?

Yes, provided always you give your legal services at or through the Legal Advice Centre in accordance with the conditions set out in Rules rS41 and rS42. You will also have to ensure that you, or the Legal Advice Centre, carry adequate insurance cover for the work, in order for you to comply with Rule rC76.1.

Scenario 4

42. You act *pro bono* for members of the public with the consent and authority of the employer and in the course of your employment. It is part of your job description to undertake *pro bono* work for the employer, something which the employer values as part of its CSR initiative. Is this permitted?

Yes, provided that there will be no charge to the members of the public. You will be acting in your capacity as an employed barrister, and whatever the nature of your employment (whether employed by a BSB entity, by an authorised (non-BSB) body, or by a non-authorised body), you are permitted to supply legal services in that capacity to members of the public free of charge³. But (particularly if you are employed by a non-authorised body) you should check that the work you do will be covered by your employer's insurance.

Scenario 5

43. You volunteer at a Legal Advice Centre, with the active encouragement of the employer. It is part of your job description to do so, and your employer advertises the

³ See Rules rS32.5, rS36.5 and rS39.9.

fact that its employees work at the Legal Advice Centre. Can you provide *pro bono* services at or from the Legal Advice Centre?

Yes, almost certainly; either because, at the Legal Advice Centre, you will be acting on behalf of your employer and therefore in your capacity as an employed barrister⁴, or because you will be acting under and in accordance with the conditions set out in Rules rS41 and rS42. You must satisfy yourself that your work at the Legal Advice Centre will be covered one way or another by insurance: either by your employer's insurance, or that of the Legal Advice Centre. But it is likely that it will be.

Scenario 6

44. You are a barrister employed in industry. A corporate client of your employer, learning that you are legally qualified, asks your employer whether you can give it, without charge, some short legal advice on a dispute which it (the corporate client) has with a supplier. Your employer agrees. Can you give that advice?

No. If you were to do so, you would probably be acting in your capacity as an employed barrister (non-authorised body) for the purposes of Rule rS38; but even so you cannot, under Rule s39 (quoted in paragraph 16), supply legal services to a client of your employer, if that employer is a non-authorised body⁵. It is highly unlikely that any insurance taken out by your employer would cover the giving of such advice.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see [here](#).

⁴ See Rules rS32.4, rS36.4 and rS39.8

⁵ Contrast the positions of barristers employed by BSB entities, and by authorised (non-BSB) bodies (e.g. law firms) who obviously can provide legal services to clients of their employers: see Rule rS32.3 and rS36.3 (quoted in paragraphs 10 and 14 above)