



Diversity in Pro Bono Roles

Reflections on diversity in law firm pro bono practice management in the UK

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Context

The past decade has seen a rapid expansion of law firm pro bono in the UK. This expansion has included the creation of many new dedicated pro bono lawyer roles within the large law firms. Ten years ago there were about 10 FTE pro bono lawyers based at law firms in the UK, all of them in London. As at October 2020 there are more than 60 dedicated pro bono lawyers, and at the time of writing there are at least 4 additional pro bono roles being advertised/recruited. It is also worth noting the 60 existing pro bono lawyers are based within just 40 of the top 100 law firms in the UK, suggesting the number of roles is likely to continue to increase for the foreseeable future.

The past decade has also seen an increased focus on diversity, with the legal profession as a whole acknowledging the need to address the under-representation of minorities, and with most firms taking proactive steps, including making significant investments.

Despite the universal acceptance of the need to improve diversity and the steps that have been taken to date, progress has been incremental. In particular the underrepresentation in large law firms of Black and Minority Ethnic (referred to in the UK as 'BAME') lawyers was brought into sharp focus during 2020 as a result of the global Black Lives Matter (BLM) movement. During an open forum on racism in the legal sector which was hosted online in August 2020, and drew extraordinary crowds from virtually every large firm in the UK, Daniel Winterfeldt QC (hon) opened the event by referring to recent research which demonstrated the people most likely to get access to a career in the legal profession, and to then progress to senior roles in the legal profession were heterosexual, white, cis, males and that research showed in summary that the further away an individual is from having those 4 characteristics, the less likely they are to succeed. It was a very sad indictment on our profession, and it underscored the validity of calls for each individual to personally commit to change.

Purpose

The purpose of this paper is to reflect on the issues of diversity and under-representation amongst the current cohort of professional pro bono lawyers, to identify issues and challenges, raise the level of consciousness (particularly amongst those who have the ability to make a positive impact), to start a conversation and engage with stakeholders and finally to promote good practices and new ideas.

In order to achieve this purpose it is essential to be reflective and critical. I don't wish for any of my colleagues to feel criticised by anything contained in this paper. The process of writing it has made me reflect on the many things I could have done differently and better over the course of my career, and I hope others receive these reflections in the spirit in which they are intended. As Oprah says, 'when we know better, we do better' and I hope we can all 'do better' together in

the coming years.

Diversity

There has been no attempt to measure diversity within the cohort of 60 professional pro bono lawyers in the UK. Nor to my knowledge has there been any effort to measure or track diversity within the global pro bono community. As far as the UK is concerned, despite the lack of statistical information, it is uncontroversial to say that the group of pro bono professionals in the UK does not reflect the diversity of the communities we seek to serve. During the consultations I held with pro bono lawyers in the UK in the second half of 2020, not one person asserted that an acceptable level of diversity had been achieved, and there appeared to be a broad consensus that there was a problem that needed to be addressed.

Notwithstanding the general consensus that exists, one of the recommendations of this paper is that the APBCo or the Collaborative Plan, ought to collect some statistics in order to track and measure diversity, and ensure improvements are achieved over time.

Key themes – issues and challenges

During extensive consultations in August and September 2020, and during 2 separate APBCo-hosted sessions at the PILnet Forum in October 2020, a number of key issues and challenges were raised or observed and identified:

- The pro bono sector in the UK will face a crisis of credibility and legitimacy if we cannot demonstrate the capacity to employ more people from the communities we seek to serve. In the context of the global BLM movement there is growing pressure for law firms to do more to support anti-racism work, but it is also clear that as a sector we have very few members of the BAME community employed in our pro bono practices. This must change, as it is surely antithetical to the notion of being actively anti-racist that we do not provide opportunities for BAME lawyers to be involved in the development and delivery of pro bono in the UK.
- There is an observed high level of awareness and high commitment to diversity issues amongst pro bono lawyers, but low levels of personal responsibility, and/or sense of lack of empowerment to make changes.
- Diversity in the large law firm context is often a challenge which is primarily addressed at 'team level', with law firm partners and managers encouraged to build diverse teams. For those law firms with dedicated pro bono lawyers in the UK, the average team size is 1.4 FTE. When the diversity of a team of less than 2 people is assessed, no one expects to find any significant diversity. However as already noted, the problem is greater than the sum of its parts, especially when combined with the challenge of a lack of any accountability for diversity across the pro bono sector.
- There is a tendency, and in some firms an accepted 'requirement' to recruit pro bono roles internally, such that most pro bono lawyers were practicing in a commercial role in a large law firm prior to transitioning into a pro bono role. As a result, the diversity amongst pro bono lawyers is reflective of the lack of diversity in the large law firm group more generally.
- Where external recruitment has occurred, there is still a tendency and in some firms a requirement, to follow standard recruitment processes, which often fail to reach under-represented groups.
- A further barrier to diversity is the tendency for recruitment processes to focus on a candidate's past experience (either working in a large law firm context, or in a pro bono role), rather than emphasising a candidate's future potential. This has tended to entrench existing structures of privilege and disadvantage.
- A review of pro bono job advertisements over the past 5 years also demonstrates that in assessing a candidate's suitability for a pro bono role, large law firms have under-valued certain categories of experience relevant to pro bono roles, including for example: experience gained in the non-profit sector; the lived experiences of candidates who are members of the communities we seek to serve.
- Many of the incumbents (myself included) created the pro bono roles they now occupy, meaning there was no transparent recruitment process. Moreover, this raises questions about the power dynamics that exist within law firms and the ability of minority lawyers to utilise those power structures for their own career advancement.

Addressing the challenge

During consultations with colleagues a number of proposals were generated to begin to improve the diversity of the pro bono sector. I summarise the ideas generated to date below, and welcome contributions from readers of any further proposals.

- In the UK there are now alternative routes into the profession, and the pro bono community should engage with and promote those pathways, as they may prove to be more appealing to or accessible to under-represented groups.
- Firms should be encouraged to recruit externally, and to value experience gained outside commercial private practice, especially in respect of those who have experience in legal aid, front line service agencies, aid and development, monitoring and evaluation, etc.
- It has been observed that law firms with pro bono teams can be divided into 2 categories, those which are actively involved in the recruitment, training and development of entry level talent, and those which benefit from the investments made by others. At DLA Piper we have never recruited from the pro bono team at another law firm, as far as I can recall. There are however many people who have been trained within the pro bono team at DLA Piper who are now working in the pro bono teams at other law firms. This raises 2 important points with respect to diversity. First, the firms that create entry level roles and invest heavily in training and development have had (and we have largely missed) the opportunity and responsibility to recruit diverse talent and feed that talent into the market. Second, for the firms that have been net recruiters of talent trained elsewhere, there is now an opportunity and imperative to 'pay it forward' and invest in the creation of entry level positions and to recruit from under-represented groups.
- Indeed all pro bono teams should seek to create fixed-term entry level positions (apprenticeships, NQ, and SQE) and recruit from under-represented groups, in order to create a pool of diverse talent with law firm pro bono experience.
- Firms should collaborate to share the costs and benefits associated with diversity initiatives. It was suggested that firms consider creating and co-funding pro bono apprenticeships or SQE positions which could be hosted by/housed within LawWorks. The funding should include allowance for supervision costs, to ensure these roles are genuine learning opportunities, established to provide genuine training and development to the participants rather than focussing on the value the participants can deliver to the employers. Such programmes would allow participants to spend time working at LawWorks and also in the pro bono teams at various law firms and would position the participants very well for employment opportunities in pro bono practices upon qualification.
- Recruitment processes need to change in order to both reach and encourage applicants from under-represented groups. We need to rethink all aspects of recruitment including how job advertisements are written, where they are posted, how they are promoted to potential candidates, the skills and expertise we value, etc. We must encourage a shift in focus towards a candidates future potential, rather than past experience.
- It was suggested that pro bono teams consider organising around particular focus areas rather than defaulting to regional structures. This would encourage firms to recruit from the non-profit sector as they seek out specialist expertise.
- It was also noted that where regional structures are adopted, there is a great benefit to having pro bono team members based in the region for which they are responsible, and that having local people manage the pro bono practice would likely support improved diversity outcomes.
- One participant suggested working closely with law firm diversity networks to engage more diverse groups of lawyers in pro bono and grow engagement with and exposure to the pro bono team.
- There is a clear need for organisations and institutions such as APBCo, PBI, the APBC and others in this space to support improved performance. Suggestions include: seeking funding from law firms to recruit and train a pipeline of diverse talent, collecting and publishing diversity statistics, publishing recruitment guidelines or best practices, engaging with law firms which may be recruiting their first pro bono role, promoting the concept and benefits of rights-holder engagement (sometimes called stake-holder engagement or end user engagement).

If we accept the notion that our own lack of diversity represents an intolerable indication of historic racism, and an existential threat to the pro bono movement we have created, then the current cohort of pro bono professionals must accept personal responsibility for, and must achieve, rapid change. That will require new roles to be funded and created in order to address the under-representation of minorities in our ranks.

As a first step, I recommend a working group be established, perhaps under the auspices of APBCo, to review, agree and prioritise the steps to be taken and to enrol the support of other people and organisations as required. It probably goes without saying at this point, but the working group should itself be diverse, to the extent that is possible.

From my own personal experience of growing the pro bono team at DLA Piper from 1 to 20 I have seen that improved diversity has often been achieved as a related outcome of initiatives that were intended to simply strengthen our pro bono practice. In other words, diversity is frequently aligned to other important strategic decision making for example: Rights-holder engagement/representation, decentralisation and re-location of roles closer to regional offices, bringing in third-sector expertise, etc.

Similarly, a strategy which makes the case for improved diversity as an important strategic priority can be used to overcome barriers to the achievement of other objectives – for example by offering a strategic imperative to underpin the business case for additional headcount in the pro bono team.

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