



## The Bankruptcy Representation Scheme ("BRS")

### Protocol

#### **The Bankruptcy Representation Scheme ("the Scheme")**

1. BRS provides advice and advocacy for unrepresented debtors in bankruptcy petitions heard each Monday during legal term time in the Business and Property Courts' (BPC) Insolvency & Companies Court List (Chancery Division), in The Rolls Building ("**the Bankruptcy List**").
2. The Scheme is a collaboration between self-employed barristers who practice in the BPC and Advocate.
3. The Scheme has the support of the Insolvency and Companies Court Judges and the Chancery Bar Association.

#### **Participants in the Scheme**

4. "Participant" means a pro bono advocate who is a self-employed barrister with post-pupillage BPC experience, or a pupil barrister undertaking a second or third six practising pupillage at a set of chambers undertaking BPC work. Each Monday during term, there will be a Participant on duty and on call.
5. The duty rota, for which Participants can volunteer, is administered and organised by the Chancery Bar Association. Participants can volunteer via the online portal on the Chancery Bar Association's Scheme webpage: [BRS rota — Barristers' Pro bono volunteer rota \(chba.org.uk\)](https://www.chba.org.uk/brs-rota). A copy of the rota will be provided to the Court each Term, with any updates or amendments being provided to the Court as they occur.
6. Once a Participant has volunteered, this constitutes a professional commitment and must be treated as such. Participants are responsible for ensuring their clerks are aware of the commitment and it is marked in their diaries. Participants should only withdraw in exceptional circumstances and are responsible for providing a replacement.

7. Participants are responsible for ensuring they act at all times within their professional obligations and their competence. Participants are free to decide whether, and if so how, they can assist. The Court will respect a Participant's decision on these matters and will be receptive to reasonable requests (for example, that a matter is taken further down the list in order to allow the Participant sufficient time properly to consider the matter and provide advice, in the event that the Participant has had limited time to prepare the LIP's case).
8. Participants are not permitted to assist unrepresented petitioning creditors. The Scheme provides advice and advocacy for unrepresented debtors only.
9. Self-employed barrister Participants are volunteers and are able to accept instructions under the licensed access auspices of Advocate.
10. Self-employed barristers are insured under their own policy with BMIF.

### **Litigants in Person**

11. "LIP" (Litigant in person) means an unrepresented person intending or due to appear as a debtor in the Bankruptcy List in the Rolls Building in London, and who is unable to afford legal representation.
12. All recipients of bankruptcy petitions presented by HMRC will be sent a copy of the Explanatory Note. The Explanatory Note contains a data protection notice.
13. On the day of the hearing, the LIP should go to the Rolls Building and speak to the court staff on the 1<sup>st</sup> floor. The court staff will direct the LIP to conference room 4, on the first floor of the Rolls Building, which has been allocated to the Scheme ("**the Conference Room**").
14. If the LIP does not have a copy of the Explanatory Note, he or she will be given one by the court staff.
15. The Scheme is designed only for persons (and specifically debtors) unable to afford legal representation. For practical reasons no "means

test” will be carried out on the day, but on any application to Advocate for further assistance after the day of the hearing there will be a review of the ability of the unrepresented person to afford legal representation.

## **Practicalities**

16. The Participant should check the listing the Friday before volunteering to check, insofar as possible, for potential conflicts. If the Participant identifies one, the Participant should email Faith Julian ([fjulian@maitlandchambers.com](mailto:fjulian@maitlandchambers.com)) and Matthew Morrison ([MMorrison@serlecourt.co.uk](mailto:MMorrison@serlecourt.co.uk)) to that effect.
17. The Participant should arrive at the Rolls Building on Monday morning at **9:30**. The Participant should first go to Counter 8 on the ground floor, and ask to collect the key for consultation room 4 (i.e. the Conference Room), for the bankruptcy pro bono scheme. The Participant will be asked to sign for the key. The Participant should then proceed to the 1<sup>st</sup> floor desk, and inform the court staff of their arrival. The court staff can also give the Participant a copy of Doyle, Keay, & Curl: Annotated Insolvency Legislation if that would be helpful – but the book must be returned to the court staff at the end of the day. The key to the Conference Room will need to be returned to the drop box on the ground floor at the end of the day.
18. The Participant should be available in the Conference Room for any LIPs, until the Court sits at **10:30**. It is also advisable, if possible, for the Participant to introduce themselves to the representative for HMRC (who usually arrives shortly before 10:30).
19. At **10:30**, the Participant should go into Court for the start of the list, and inform the Judge that they are attending on behalf of the Scheme and, insofar as possible, identify petitions upon which the Participant will appear.
20. Unless the Participant is in Court, the Participant should remain in the Conference Room until **12:30**.
21. The Participant should return at **13:30** for the afternoon list and be available for any LIPs until **14:30**. Between **12:30** and **13:30** and between

**14:30** and **16:15**, if there are no LIPs requiring assistance, the Participant may return to their Chambers but should provide their mobile number to the court staff, and be available to return at short notice within those times if required.

22. If a LIP appears before the Judge hearing the Bankruptcy List without the assistance of the Participant, the Judge will make the LIP aware of the Scheme and enquire whether the LIP has taken the opportunity to speak with the Participant. If the LIP wishes to make use of the Scheme, the Judge may consider it is necessary to adjourn the hearing for a short time while the LIP speaks with the Participant.

23. If the Participant is not in the Conference Room or the Rolls Building, the court staff will make enquiries with the Participant and/or their chambers as to their whereabouts. As noted at paragraph 21 above, the Participant should be able to return to the Rolls Building at short notice.

24. On the day of the hearing, the Participant will:

24.1 offer such advice to the LIP as is possible and professionally appropriate in relation to the hearing;

24.2 be ready, if requested and if content that it is professionally appropriate to do so, to appear for the LIP on that day's hearing.

25. Participants must take into account their professional obligations and their competence when deciding what assistance, if any, they are able to offer. Participants are free to decline to provide assistance, and to decide the scope of any assistance they do provide. As noted at paragraph 7 above, Participants are free to request that the Court takes a matter further down the list in order to give the Participant sufficient time to consider the case. However, any decision in this respect will be at the discretion of the Court.

26. As regards appearing for the LIP on that day's hearing, normally the Participant will appear to make the whole of the argument that is required. However:

26.1 the LIP may request the Participant to appear to make only part (rather than all) of the argument;

26.2 equally the Participant may inform the LIP that they are prepared to make only part of the argument;

26.3 in either situation, for the purpose of the Scheme, the Court will be asked to hear both the Participant and the LIP, on the basis that the Participant will make only part of the argument.

27. At the end of the work undertaken on that day for the LIP, the Participant will complete a form summarising what has happened and what needs to happen next ("**the Concluding Letter**"). A copy of the Concluding Letter should be given to the LIP (if possible by email), and a further copy should be kept by the Participant. A final copy should be provided by email to Advocate ([bankruptcy@weareadvocate.org.uk](mailto:bankruptcy@weareadvocate.org.uk)) for record keeping.

28. Participants are encouraged to retain copies of any notes they make.

### **Costs**

29. If appropriate, Participants are encouraged to seek pro bono costs orders under section 194 of the Legal Services Act 2007 and CPR Rule 46.7. Information about pro bono costs can be found at [www.ATJF.org.uk](http://www.ATJF.org.uk) and in the notes in the White book to CPR Rule 46.7 and PD46 paragraph 4.1. It is fairly unlikely this will arise in the context of this Scheme, however.

### **Additional assistance on the day of the hearing**

30. It is possible that the LIP will be accompanied by a "McKenzie Friend". The Participant should respect this choice. Useful guidance on the exercise of the right to have the assistance of a lay person is contained in *Practice Note (McKenzie Friends: Civil and Family Courts)* [2010] 1 W.L.R.

1881). In the event of a difficulty or complexity the Participant should raise the matter by telephone with Advocate as soon as possible.

31. Where the matter is of a complexity or nature that the assistance of a solicitor (not undertaking advocacy) as well as that of an advocate is necessary, even for the purpose of appearing for the unrepresented person on that day's hearing, the Participant is not required to appear (although they may consider whether it is appropriate to apply for an adjournment to enable the LIP to take further advice), and the LIP should be referred to Advocate for further assistance. If the Participant is in any doubt, they should refer to Advocate ([bankruptcy@weareadvocate.org.uk](mailto:bankruptcy@weareadvocate.org.uk)) before proceeding further.

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

32. The Participant is not able to provide ongoing assistance to the LIP under the licensed access provided by Advocate.
33. If the LIP wishes to apply for further assistance from Advocate (for example, detailed advice or appearance at a subsequent hearing), they should be referred to Advocate ([bankruptcy@weareadvocate.org.uk](mailto:bankruptcy@weareadvocate.org.uk)) and the website <https://weareadvocate.org.uk/>.
34. The application will be considered by Advocate in accordance with its usual procedures. This will include a review of the ability of the unrepresented person to afford legal representation.
35. It may also be helpful to direct LIPs to National Debtline (<https://nationaldebtline.org/>), Business Debtline (<https://businessdebtline.org/>), or TaxAid (<https://taxaid.org.uk/>).
36. Where a hearing is adjourned to a later day when the Participant will not be on duty, the Participant should ensure that sufficient information about what happened at the hearing is included in the Concluding Letter (and encourage the LIP to bring the letter to the next hearing). There is no expectation that a Participant will attend at the next hearing date, but the Participant is free to do so if the Participant considers it appropriate.

37. When briefing Advocate, the Participant:

37.1 should note any relevant observations made by the Court at the hearing; and

37.2 is free to express any view to the other Participant and/or Advocate about the merits and nature of any further assistance.

**Comments, concerns or complaints**

38. If the LIP or a Participant wishes to raise any comment, concern or complaint he or she should write to the Chief Operating Officer of Advocate at 2nd Floor Lincoln House, 296-302 High Holborn, London WC1V 7JH .

39. Advocate will produce quarterly reports. These will be shared with the Chief Insolvency and Companies Court Judge and will record:

39.1 How many volunteers are listed;

39.2 How many people have attended for help (including whether any could not be seen);

39.3 How many people have been accepted for help.

40. The Scheme will provide an annual report to Advocate on the impact of the Scheme on the Court process by consulting court staff and/or the Judiciary hearing these cases including:

40.1 Time saved by volunteer involvement;

40.2 Costs of the time saved;

40.3 Anecdotal comments from the court staff and/or the Judiciary.