



The Bankruptcy Representation Scheme ("BRS")

Q&A for Participants

High Court

Thank you for volunteering. Those thanks come from the Chancellor and the Insolvency and Companies Court Judges of the Chancery Division, the Chancery Bar Association ("ChBA"), and Advocate ("Advocate").

In addition to this note, please do make sure you read:

- the Protocol;
- the Explanatory Note (given to those attending the Bankruptcy List in the Rolls Building without representation); and
- the Concluding Letter given to unrepresented parties at the conclusion of a day's assistance.

These are all available on the website ([BRS rota — Barristers' Pro bono volunteer rota \(chba.org.uk\)](https://www.chba.org.uk)), as is the monthly rota.

Am I obliged to provide assistance in every case?

- You must always take into account your professional obligations and your competence when deciding what assistance you are able to offer, and it is your responsibility to satisfy yourself it is appropriate to act.
- You are free to decline to provide assistance, and to decide the scope of any assistance you do provide.
- The Court will respect your decision in these matters, and although the decision will be at the discretion of the Court, you are also free to make reasonable requests (for example, that the Court takes a matter further down the list in order to give you sufficient time to consider the case).

- BRS is only for litigants in person (LIPs) intending or due to appear as debtors in the Bankruptcy List before the Insolvency and Companies Court Judges in the Rolls Building. You are not able to provide assistance to other persons under Advocate's licensed access. For the avoidance of doubt, you are not able to provide assistance to petitioning creditors (even if they are unrepresented).

What about insurance?

- Barrister Participants must be (i) self-employed tenants at a set of chambers (or a self-employed practitioner on their own account) with insurance cover under the Bar Mutual Insurance scheme, or (ii) a pupil barrister undertaking a second or third six practising pupillage at a set of chambers undertaking BPC work. All Participants will volunteer under the licensed access auspices of Advocate.

What if I find that I am no longer available on a day for which I have volunteered?

- A BRS shift constitutes a professional commitment and must be treated as such.
- You should withdraw only in exceptional circumstances, and you are responsible for providing a replacement.

On my duty days am I on standby or do I turn up outside the Court?

- You must be in or outside conference room 4 on the first floor of the Rolls Building ("**the Conference Room**") at **09:45** on your duty days. We recommend you attend the Rolls Building at **9:30**, so that you have sufficient time to sign for the key to the Conference Room (at Counter 8 on the ground floor), introduce yourself to the ICCJ court staff (on the 1st floor), and set up for the day.
- When the list is called on at **10:30** please go into Court whether or not any LIPs have already contacted you. There may be a person without representation inside whom you can assist, or the Court may know that one is due to appear later. It is also advisable to introduce yourself to HMRC's representative when they arrive (usually at 10:20 or thereabouts).

- You must then remain outside the Court or in the Conference Room until **12:30** but if there is no one who requires your assistance you may return to Chambers / your place of work. If you leave Court, please give a contact telephone number to the court staff.
- You must return at **13:30** for the afternoon list, and be available for any LIPs until **14:30**. If there is no one who requires your assistance, you may return to Chambers / your place of work.
- However, you are **on duty** until the end of the Court day, and you do need to be by a telephone in Chambers / at work.
- You may receive a call from the ICCJs' clerks at any time between 10am and 4.30pm asking you to attend the Court. You should then attend as soon as possible, and in any event no more than 30 minutes should elapse between the call and your attendance at Court.

What should I do to prepare?

- Please read the Protocol, Explanatory Note and Concluding Letter in order to inform yourself about the scheme (which can be found here: <https://probono.chba.org.uk/brs-rota>).

What practical steps should I take on the day?

- The Conference Room (number 4) will be set aside for you for the purpose of speaking confidentially to the LIP. Sign for the key at Counter 8 on the ground floor, and return the key to the drop box on the ground floor at the end of the day. The ushers at Counter 8 should know who you are, if you say you are attending for the bankruptcy pro bono scheme and ask for the key for conference room 4.
- The court staff will, if they can, refer parties without representation to you, but you should also keep an eye out for individuals who may need the Scheme's assistance.
- Whenever you leave the Conference Room, please lock the door.

- At the end of the day, lock the door, and return it to the drop box on the ground floor.
- Please give all unrepresented parties a copy of the Explanatory Note, if they do not already have one (the ICCJs' clerks should have spare copies). The LIP may have difficulty reading and digesting the whole of the note, but please draw their attention to at least the boxed text and, if appropriate, explain its contents in terms that the LIP can understand.

What about the whether the person seeking help could afford to pay?

- For practical reasons please simply assume that the unrepresented person is unable to afford legal representation. If in doubt, please contact Advocate at bankruptcy@weareadvocate.org.uk.

What type of help am I expected to give?

- You are under no obligation to provide any, or any particular, assistance. (See "Am I obliged to provide assistance in every case?", above.)
- There are 3 types of help you might provide to debtors: (a) advice (b) representation and (c) providing details (if needed) for an application to Advocate for further assistance at a later date.
- You should always try, if appropriate, to advise. It is understood that you are new to the case, that the conditions are not ideal, and that time is limited. Please offer such immediate advice to the unrepresented person as is possible in the circumstances and within your professional competence.
- The Scheme also contemplates that you will be ready, if requested and if proper to do so, to appear for the unrepresented person at that day's hearing.
- At the end you should (so far as possible) advise the unrepresented person what to do next.
- If an unrepresented person does not have a case listed that day (which is unlikely in the context of the Scheme), you should decide whether it is appropriate for you to assist, and you may decide that they should instead be referred to Advocate, or indeed another local service.

- You should not in any event assist unrepresented persons who do not intend or are not due to appear in the Bankruptcy List as a debtor. Such assistance would not be covered by Advocate's licensed access. You are not able to assist unrepresented petitioning creditors; the Scheme is for debtors only.

Should Participants work together?

- Participants are free to work together where appropriate (although should always be mindful of possible conflict issues).

What if there are several points but I consider one to be a hopeless point or one that I consider may not properly be advanced?

- You should inform the LIP that you are prepared to make only part (rather than all) of the argument. You should explain why.
- If they insist that the point is advanced, you should say that they will have to advance that point themselves, and you should ask the Court to hear both you and the LIP, on the basis that you will make part of the argument and the LIP will make the remainder of the argument.
- You should inform the LIPs that they will not (usually) be asked to comment on or add to any arguments that you have presented to the court.
- If the LIP's case is hopeless or an unarguable case, please do not suggest that the unrepresented person seek (further) advice from Advocate.

What if the matter is nearing the limit of my competence or too complicated to be able to manage on the day?

- As explained above, you are responsible for ensuring it is professionally appropriate and within your competence to assist. However, please do not be deterred from providing assistance where you can, because the unrepresented person will often be better placed with what help you can give, than without that help.
- The ICCJ clerks have a textbook available for the use of volunteers (*Doyle, Keay & Curl: Annotated Insolvency Legislation*). If you use the textbook, please return it to the clerks at the end of the day. There are also notes on bankruptcy

petitions here: [BRS Documentation — Barristers' Pro bono volunteer rota \(chba.org.uk\)](#).

- Consider working jointly with any other duty Participant on the day (subject to the point above about conflicts).
- You are also free to call or email Faith Julian (fjulian@maitlandchambers.com / 020 7406 1200) or Matthew Morrison (mmorrison@serlecourt.co.uk / 020 7242 6105).
- Consider whether it may be in the interests of the LIP if the matter could be adjourned, with an application then made to Advocate to bring in a more experienced advocate or one with specific expertise (if appropriate) on a future occasion or to arrange detailed advice.
- Where any application to Advocate for assistance may be involved please remember to make clear to the unrepresented person that the application requires a means test and may not be successful and that it will take some time to be processed except in cases of real emergency.

What about costs?

- It is fairly unlikely that you will be seeking costs in the context of the bankruptcy list. However, in appropriate circumstances, you should consider making an application for a pro bono costs order under s. 194 of the Legal Service Act 2007 and CPR 46.7. The effect of a pro bono costs order is that the paying party must make a payment of a sum no greater than the party with pro bono representation would have been entitled if representation had not been provided free of charge to a charity, The Access to Justice Foundation.
- Further information about pro bono costs orders is available in Conference Room 18 and can be found at www.ATJF.org.uk. The notes in the White Book to CPR 46.7 and at PD46 4.1 are also helpful.
- Although a written statement of costs is usually required (PD44 9.5) the failure of a party to provide a written statement will only be taken in account by the court if there is no reasonable excuse for the failure (PD44 9.6). Obviously the provision of a written statement will not be possible where you first became involved with the case on the day you are volunteering (rather than having

received papers ahead of time). In those circumstances, you might consider reminding the Court that you were engaged only that day and that the requirement for a written statement is in Practice Direction 44 and is not a Rule. You could inform the Court orally of the time you have spent and your hourly rate (or if you consider the case could have been handled by someone significantly junior to you, suggest an appropriate hourly rate).

What should I do at the end of a case?

- After assisting an unrepresented party, you must complete a Concluding Letter (a soft copy can be found in the Scheme's section of the Chancery Bar pro bono website: <https://probono.chba.org.uk/brs-rota>), which will summarise what happened and what needs to happen.
- One copy of the Concluding Letter should be given to the unrepresented person, preferably by email.
- If the LIP does not have access to email, complete the Concluding Letter in manuscript. If you are comfortable that you have the appropriate level of security on your phone, take a photograph of it, email it to yourself and Advocate (see below), and give the hard copy to the Participant.
- The Concluding Letter should be provided to the LIP the same day.
- If the LIP's hearing has been adjourned, the LIP should be encouraged to bring the Concluding Letter to the next hearing, to assist the Participant attending on that occasion.
- Indeed, when drafting Concluding Letters, Participants are asked to bear in mind that it may provide a useful summary for the Participant on the next occasion.
- **The copy of the Concluding Letter for Advocate should be emailed to bankruptcy@weareadvocate.org.uk.**
- After you have given the client the Concluding Letter and provided a copy to the LIP your involvement in the case under the licensed access provided by Advocate is at an end. If the LIP requires further pro bono assistance they should be directed to either Advocate directly, or another local service who

can help them apply to Advocate. If you wish to volunteer to assist on the case going forward on a pro bono basis please let the Advocate know.

- Once you sign up for a shift with the Scheme, you will also receive an email prompting you to complete a survey at the end of that shift. This will be a short online form where you will need to provide brief details of the type of assistance you have provided that day. It is vital that you complete this form at the end of each day on which you have volunteered, as this allows Advocate to track the work being carried out by volunteers, and provide reports to the Chancery Bar Association.

What if the LIP is struggling to cope with the stress of the occasion and might benefit from some trained (non-legal) company?

- Consider asking the unrepresented person to go to the PSU office in the Royal Court of Justice in the Strand, or contact the RCJ Advice Bureau yourself (020 7947 7585); please use this number for urgent requests only to ask to see whether a PSU representative can be made available.
- If a PSU representative is made available, please make them feel welcome.
- The involvement of a PSU representative might be valuable in many cases, but particular examples include (a) where you will need to concentrate on advocacy and the unrepresented person will find it difficult to be left alone, (b) where the matter is complex and trained (non-legal) company will help the unrepresented person to concentrate or to take in what is happening or what you are telling them, (c) where the unrepresented person suffers from a material disability, and (d) where there is hostility or mistrust between the other side or their lawyers and the unrepresented person.
- The unrepresented person may be accompanied by a "McKenzie Friend" who they wish to provide support. If that is the case please respect the choice, but in case of difficulty contact Advocate. Sometimes this is another situation in which a PSU representative may be of help.

What if the LIP or the other party has a “McKenzie Friend”? Is the “McKenzie Friend” entitled to speak in court?

- Litigants have the right to have reasonable assistance from a lay person (“McKenzie Friend”) to i) provide moral support for litigants; ii) take notes; iii) help with case papers; iii) quietly give advice on any aspect of the conduct of the case. A McKenzie Friend may not: i) act as the litigant’s agent in relation to the proceedings; ii) manage litigants’ cases outside court, for example by signing court documents; or iii) address the court, make oral submissions or examine witnesses.
- Useful guidance on the exercise of the right to have assistance of a lay person is contained in *Practice Note (McKenzie Friends: Civil and Family Courts)* [2010] 1 W.L.R. 1881.
- The court may grant a right of audience to a McKenzie friend on a case-by-case basis but the *Practice Note* states that “Courts should be slow to grant any application from a litigant for a right of audience or a right to conduct litigation to any lay person, including a MF. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline”.
- The unrepresented person may find the court is unwilling to grant their McKenzie Friend permission to address the court if a BRS volunteer is available.
- Some McKenzie Friends charge fees for their assistance. The extent to which such fees may be recovered from the litigant or from the other side is dealt with in the *Practice Note*.

What if I need more time on the day to read the papers or to take instructions or to research a point?

- You could consider asking the Judge or court staff (involving the other side if present) whether the matter can be taken at a later time that day (by asking for it to be mentioned at a convenient moment) or at a lower point in the list.
- In a complex case you may sometimes conclude that the merits and suitability of seeking an adjournment will need to be considered.

What resources are available within the Rolls Building to help me prepare for a hearing?

- The court staff at the first floor desk have a copy of Doyle, Keay & Curl available for volunteers, which is a textbook containing the Insolvency Act 1986 and the Insolvency Rules 2016. If you use this, please return it to the court staff at the end of the day, since nothing can be left in the Conference Room.

As a barrister, am I entitled to act alone, without a solicitor? Or what if the matter is of a complexity or nature that more assistance is needed?

- Self-employed barristers (or practising pupils) participating in the Scheme are entitled to act alone, without a solicitor, because they are acting under the auspices of Advocate, which has a licence from the BSB.
- Where the matter is of a complexity or nature that the assistance of a solicitor as well as the barrister is necessary you are not required to appear (although you may consider whether an application for an adjournment to enable the unrepresented person to take further advice is appropriate), and the unrepresented person should be referred to Advocate for further assistance.
- You should never act in circumstances or to an extent where your own competence will be exceeded.
- If you are yourself in any doubt please refer to Advocate before proceeding further.

I understand that 3 weeks' notice is required for an application for further assistance from Advocate. What if the case needs further assistance within a shorter period?

- Please contact Advocate at bankruptcy@weareadvocate.org.uk and explain the situation to them, including whether or not you are willing or able to provide the required emergency assistance. They will then be able to consider whether or not an application is suitable.

What about GDPR?

- The Explanatory Note given to unrepresented persons to read contains a data protection notice. The notice states that duty advocate will have a privacy notice on their chamber's or firm's website. If this is not the case you should tell the LIP where they can find your privacy notice.