

**KEYNOTE SPEECH AT THE
NATIONAL PRO BONO CONFERENCE**

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BY THE RT HON LORD GOLDSMITH QC PC

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I am delighted to be here today at the start of what promises to be another tremendous National Pro Bono week. I congratulate the organisers and supporters of this week. It provides an extraordinary opportunity to celebrate the work already being done and to set the agenda for what more needs to be done now.

My particular role today is to report to you on the work of the Access to Justice Foundation and pro bono costs orders; and to announce what we have done with the money the Foundation has collected.

I hope that many of you here today are already familiar with pro bono costs orders and the Access to Justice Foundation. However please indulge me for a few minutes as I talk about both, for those who may be looking at me with incomprehension!

The Access to Justice Foundation was established in October 2008 and is a registered charity. On its Board are 9 Trustees, representing the pro bono community, the professional bodies and the judiciary, and I am honoured to be the Chairman.

It was established for a specific statutory purpose, but its potential role is much wider. Whether it achieves this wider role depends on professional bodies, the pro bono community, and Government too, perhaps. Let me explain.

First some history. All lawyers are familiar with the rule that costs follows the event, so in most cases the unsuccessful litigant has to pay the successful litigant's legal costs. This helps fund the litigation but also means there is a disincentive for a litigant wanting to contest a bad case.

But for pro bono cases this didn't work.

The indemnity principle prevented courts from ordering costs if the client wasn't liable to pay. This meant that if pro bono lawyers litigated, for example, against a large corporation and won, the corporation would not be required to pay anything in respect of the legal representation that the pro bono lawyers provided - whereas had those lawyers been working for a fee, the corporation could have been out of pocket for tens to hundreds of thousands of pounds of legal costs.

Section 194 of the Legal Services Act 2007 was introduced to right this wrong, enabling judges in a pro bono case to order money not for the lawyer's costs but to a specified charity which would then use the money to support pro bono activities throughout the country.

This has 3 advantages:

Firstly, the unsuccessful party who was not assisted by pro bono lawyers no longer receives the benefit of pro bono representation reducing its costs liability to the successful party to nil. Pro bono work was never intended to help the well off or big corporations save money.

Secondly, it provides very much needed additional funds to support pro bono activities. I am hearing more and more worrying stories about important organisations that are failing from lack of financial support. This means that people in local communities risk not getting the critical legal services they need and can't afford to pay for themselves.

Thirdly, it allows a more strategic view to be taken in distributing such funds to pro bono organisations. Pro bono organisations in cities often benefit from local law firms choosing to support them. Organisations in more remote areas have few local firms to turn to for funds or practical assistance, placing them at a disadvantage when it comes to finding support - irrespective of how valuable their work may be.

And new, innovative projects often can't find any support at all. Being able to distribute funds across the country and to include strategic pilots allows those with no other access to funds, an equal chance of support.

The charity that receives the funds from pro bono costs orders is the Access to Justice Foundation. It is the only body under the Statute that can do so and was set up for that purpose. It is an initiative of the entire legal profession - solicitors, barristers and legal executives, working with the not for profit and voluntary legal advice sector

I want now to cover three things: obtaining pro bono costs orders, what's happened with the Foundation so far, and our future plans.

How do you get an order?

Broadly, a judge can make a pro bono costs order in any case he could have awarded costs and where the winning party is pro bono represented. Full details can be found [on the Foundation's website](#) and I encourage you to look.

But we need to make sure pro bono costs orders are made. A lawyer would never finish a court case without thinking about what happens to costs - indeed, lawyers can spend an inordinate amount of time arguing what costs are acceptable, how they should be assessed and so on.

So in a pro bono case, every lawyer should think equally “Is this case eligible for a pro bono costs order, and what do I need to do to get it?”

The “what” is very simple.

- Tell the judge you wish to seek an order. Orders require an application – just like costs do – so you must ask.
- There is a choice between a summary or detailed assessment. The rules are the same as for normal costs orders so the court will require information to help assess what the legal costs would have been had the representation not been free. Therefore lawyers should keep normal records of time spent. The usual costs procedures should be followed, so when seeking summary assessment the pro bono assisted party should file and serve a statement of ‘costs’ (e.g. using Form N260).
- There is a simple form of order on [our website](#). That also has other guidance if you have questions. Guidance has also been included in your conference materials.
- Ensure a copy of the order when you get it is sent to the Foundation.

Now, what has happened so far with the Foundation?

The Foundation has received income from several costs orders. The first was a modest order, obtained when a barrister from the Bar Pro Bono Unit represented an individual at County Court level. A relatively straightforward case, and a good example of pro bono assistance that is provided countless times across the country each year.

The second order was the biggest. It was a case brought by the housing charity Shelter with the pro bono support of Freshfields Bruckhaus Deringer and a barrister, Andrew Walker. Andrew took the case on a pro bono basis and spent several months preparing for the hearing. As it turned out, the client was finally able to obtain legal aid for the court hearing itself, but the five months of preparation and pleadings before this – a necessity to actually bring the matter before the court – all of that preparation was undertaken pro bono. Andrew's effort in this case earned him the Bar Pro Bono Unit Award this Saturday.

Finally, the most recent costs order was obtained at the High Court, for pro bono assistance by barrister Timothy Pitt-Payne and the Friends of the Earth "Rights & Justice Centre" when supporting an individual in a case of public interest.

The Foundation has received income from other sources as well – donations in lieu of Christmas cards; general donations and small donations of unclaimed client account monies.

The orders and donations have enabled the Foundation to hold its first grant funding round. This we deliberately targeted at small grants so the money would go further. As the Regional Legal Support Trusts are at varying stages of readiness, the Foundation invited applications directly to itself from any size of organisation.

We received 26 applications and have been able to offer grants to 14 organisations across England and Wales, ranging from small local projects through to regional collaborations and national organisations. Full details will be provided in our press release and on [our website](#) but I'd like to give a couple of examples for now:

- We have been able to offer support for essential IT costs to Gloucester Law Centre and Streetwise Community Law Centre, to help each Centre maintain or increase its caseload.
- We have been able to offer Devon Law Centre a grant to help with training costs to ensure its lawyers remain up to date.

- We have provided a grant to the Asylum Support & Appeals Project towards the cost of essential telephone interpretation with clients.

These are 4 of the 14 grants we have offered, and each one has the potential to support numerous cases as a result. I hope you'd all agree that being able to support so many activities from just 3 costs orders and donations is a pretty good return.

What about the future?

Firstly, we will continue raising awareness of pro bono costs orders and how to seek them, but I also urge you all to spread the word as well. Pro bono costs orders are a double win: they mean pro bono client has been helped but also that case can now go to help other cases, and you should always ask for one.

Secondly, as the funds come in, we will make more grants, finding our way with the Regional Legal Support Trusts as to where the greatest need is and how to spot those who will benefit most from any monies available.

A word here about Regional Trusts, for those who are unfamiliar with them. Seven Regional Legal Support Trusts have been set up to cover all of England and Wales.

Each Trust will organise annual Legal Walks in their area, mirroring the London Legal Walk that has raised over a million pounds in 5 years for pro bono organisations in London and the South East. The Foundation will work together with the Trusts and other national pro bono organisations in identifying and distributing funds from both pro bono costs orders and donations.

And thirdly, the Foundation will focus its attention on identifying other sources of new, additional funding that can be pulled into the pro bono sector.

After a lot of hard work by many people, we have now got an established charity with a range of experienced trustees and growing experience in supporting the voluntary legal sector. A charity that has links across the country, to Trusts that will work hard to identify local needs and priorities.

Surely then, the Foundation is a logical body to administer additional funds that can be generated not just from voluntary donations but other sources.

For example, it is time to say that we finally need to solve the problem of unclaimed client account balances. Solve the problems for law firms, facing years of responsibility for money that they cannot use but cannot return to clients who cannot be found. Solve the problem of a growing need for support in the pro bono and voluntary sector, by diverting such funds to organisations that can

make best use of them. We now have a national structure, with growing experience, able to collect and distribute these funds to where the need is greatest.

I mention unclaimed client account monies but this is surely not the only place where additional money can be found and put to good use by the legal profession working together.

Never has pro bono been more important. We are in a recession. People are losing their jobs and their homes. Businesses and charities are closing down. People need advice but they do not have the funds to pay for it. Unless eligible for legal aid, they have nowhere to turn but the pro bono and voluntary sector.

When we talk to the providers, they tell us tales of people hit by the recession. The pro bono providers are doing fantastic work, and I admire them enormously. Pro bono depends on the services of people giving their time for free, but that isn't enough on its own. The infrastructure, modest staff costs, training, accommodation - all of these have to be covered by the organisations with whom the pro bono lawyers work.

But this sector is stretched to capacity, swamped by an ever increasing demand and an ever decreasing budget. Meanwhile money is sitting there, unused, in a range of situations. Unclaimed client accounts are one example, but there are no doubt others if we think ambitiously and creatively.

And so I make no apologies for speaking out at this time. We now have a national structure in place, of a charity that could receive additional funds and distribute them throughout the country with the Regional Legal Support Trusts, targeting the organisations that need money the most in order to help the most vulnerable in society.

Taking all of this together, it is surely my duty as Chairman and a charity trustee to speak out about this, and ask why such funds aren't being made available to be shared with the pro bono and voluntary legal sector.

And I call on everybody involved in pro bono to come together on this, to work for the common good of getting that money out to the organisations in need; because, in the words of Antoine de Saint-Exupéry, "The time for action is now". Not when the recession is a distant memory - now.

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