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Pro bono costs: lawyers miss out on claiming free money for charity

The Access to Justice Foundation has released the results of a survey of the legal profession showing that the majority of those asked were unaware of the existence of “pro bono costs” and so this funding is not being fed to legal charities that could benefit.

Since October 2008, lawyers acting for free can obtain costs on winning a civil case. The losing party is ordered to pay these costs to the Access to Justice Foundation, which then distributes the funds to legal charities so they can provide further help. At a time of local and central government cuts, additional funding for legal help, such as pro bono costs, is more important than ever.

The online survey of barristers, legal executives, and solicitors revealed:

72% of respondees did not know they **could obtain** pro bono costs on winning a civil case.

86% did not know such costs could be included in a **settlement**.

88% did not know **how** to obtain pro bono costs in a case.

Former attorney general Lord Goldsmith QC, who chairs the Foundation said “The number of pro bono costs orders started modestly and has seen a promising increase proving that when lawyers know about pro bono costs, they obtain them. A recent single case produced £41,000 in costs for the Foundation. However, the scheme has by no means reached its full potential. If lawyers don’t know about pro bono costs, they can’t obtain them – and too many lawyers still don’t know about them.”

The Master of the Rolls, Lord Neuberger of Abbotsbury, added “It is very important that everyone is aware, whether judge or advocate, that costs can now be awarded when lawyers act pro bono. Pro bono costs enable courts to direct a sum of money be put back into pro bono. It is surprising speaking to judges how many are unaware of this important development. Without this money the Foundation can support less pro bono work and every penny counts.”

It is not just lawyers acting for free that need to be aware of pro bono costs. Any lawyer representing a normal client may be faced with a pro bono opponent and their client now faces the risk of adverse costs if they lose. Previously a party losing to a pro bono litigant avoided paying legal costs. Lord Goldsmith commented “Pro bono costs have an important role in helping level the playing field, as now both sides have a costs risk to consider, thereby assisting settlement.”

Notes to Editors:

1. The online survey was conducted during National Pro Bono Week 2010, with the support of the Law Society, Bar Council and ILEX, who founded the Access to Justice Foundation in 2008 together with the Advice Services Alliance. 312 lawyers responded to the survey which was not intended to produce scientific results but rather gauge the general level of awareness. The survey's results match existing anecdotal evidence that the majority of lawyers are unaware of pro bono costs. The survey coincided with the Master of the Rolls and Solicitor General helping launch the "Unlock Funds for Justice" campaign, to increase awareness of pro bono costs (more at www.atjf.org.uk/downloads/ATJF_Unlock_Funds_for_Justice_launch_news_101110.pdf).
2. Section 194 of the Legal Services Act 2007 introduced "pro bono costs" which are like ordinary legal costs, but where a party had free legal representation. If a civil case is won with pro bono help, pro bono costs can be ordered by the court, or included in settlements. The procedure is broadly the same as normal costs. The costs are paid to the prescribed charity, the Access to Justice Foundation. Quick guides for the legal profession and a poster can be downloaded from www.ATJF.org.uk/costs
3. The Access to Justice Foundation is a national charity that provides grant funding to support pro bono and advice agencies that give free legal help to the public in need. The Foundation works with a network of seven Legal Support Trusts across England and Wales, and partners with the national pro bono and advice organisations. For more information visit www.ATJF.org.uk.
4. The Master of the Rolls is the head of civil justice in England and Wales, and the second most senior judicial office after the Lord Chief Justice.
5. Enquiries should be directed to enquiries@atjf.org.uk or telephone Toby Brown on 020 7696 9900.