

27 March 2009

Former Attorney General calls on lawyers to use new legislation to boost access to justice funds

Lord Goldsmith QC last night called on all pro bono lawyers to begin utilising Section 194 'pro bono costs orders', to increase resources for access to justice.

Speaking at City Law School's Pro Bono Fair the former Attorney General explained the 'double your effort' benefit of the new legislation under Section 194 of the Legal Services Act 2007.

He described the new process, whereby when a pro bono assisted party wins its case, the court may now make a Section 194 order in its favour. Put simply, if pro bono lawyers provided pro bono legal advice and representation worth £10,000 on a case, the court may now make an order that the losing party must pay those costs, in the same way it would had those lawyers been charging the client for those services.

Previously where a case had been won with pro bono help the losing party would have escaped liability for costs. All the monies will now go direct to a single charity – The Access to Justice Foundation - which will distribute funds to voluntary, not-for-profit and charitable pro bono organisations – places where such funds are needed the most so that those needing pro bono assistance can obtain it.

The Foundation was established to receive and help distribute these (and other) additional financial resources so as to help get pro bono legal assistance to those who need it.

Lord Goldsmith said, "at last, where a pro bono assisted party must assert its rights or defend its position in court, the other party is now equally liable for potential costs. In negotiations, the pro bono lawyer can use this "carrot" to encourage settlement or to obtain a better settlement for their client than they might have obtained previously. If the opposing party knows it will face a costs order, it has a real incentive to settle - and to settle on good terms."

He added, "by helping one client, the pro bono lawyer assists a second for free. You can double your pro bono effort because the Section 194 order you obtain will go to support pro bono services - and another person or maybe many people can be helped in other cases."

Lord Goldsmith's speech comes as the Foundation is approaching its first full 6 months in operation, and has received both funds from a modest first Section 194 order, and some strategic donations from the legal profession. Lawyers have also reported achieving settlements in pro bono assisted cases due to the other party's potential liability to pay Section 194 costs.

Since the launch of the Foundation last October, the nationwide network of Regional Legal Support Trusts continues to be developed, which with the Foundation provide strategic enhancements of the infrastructure to improve access to justice.

Lord Goldsmith, who is Chairman of the Access to Justice Foundation, said: “It’s simple and just like applying for costs in a fee paying case, only this way you can double your pro bono effort, win the case for your client and the money will support other pro bono advice and assistance in the future.”

He concluded by stressing the importance of pro bono work in providing access to justice for those who cannot afford legal assistance but cannot get legal aid – emphasising however that pro bono complements and does not substitute for a publicly funded legal aid service.

Notes to Editors

1. The Access to Justice Foundation is a registered charity, chaired by Lord Goldsmith QC, with trustees drawn from across the legal profession and the advice sector, reflecting that the scheme as a whole is a cross-profession initiative. For more information on the Foundation, please visit www.accesstojusticefoundation.org.uk

2. The Foundation is the prescribed charity under Section 194 of the Legal Services Act 2007. Section 194 came into force on 2nd October 2008, as did “light touch” supporting amendments to the CPR, in particular a new rule 44.3C. For online resources see the Foundation’s website at <http://www.accesstojusticefoundation.org.uk/funds-in/section-194/>

Further detailed guidance, including a draft order, will be published shortly on the website.

3. Section 194 enables the Courts of England & Wales to require a party who loses a legal case against a party with pro bono help to make a payment to the Foundation in an amount equal to an order for costs (a “pro bono costs order”). Previously under English law the losing party would have had no liability to pay costs, whilst had it won it would have been able to seek costs.

4. Broadly speaking, seeking a Section 194 order is like seeking an order for costs. In his speech Lord Goldsmith said that “Lawyers in a position to apply for a Section 194 order need remember only 6 key points:

- 1) Record your time – just as you would for a paying client. You’ll need to tell the judge how many hours you worked and your usual rate- a costs schedule is a good way of doing this.
- 2) Always ask the judge to make a Section 194 order where your client wins their case.
- 3) Tell the judge he can and should make an order in the same way as if it were an ordinary costs order – except of course that the funds will not go to the lawyer on the case but to the Foundation to support voluntary and not-for-profit organisations that provide pro bono assistance.
- 4) Tell the judge he may choose from a summary or detailed assessment in determining costs. He can order all or part of the costs that would have been payable if it had been a fee paying case.
- 5) Provide your draft order and costs schedule to the judge. The Foundation hopes to provide a sample draft order on its website soon.
- 6) Ensure you send a copy of this order to the Foundation.”

5. Regional Legal Support Trusts now exist for London and the South East, for Wales, for the Midlands, for the North West and for the North East of England. Work is underway establishing Trusts for the South West and for the East of England.

6. The Foundation will publish at www.accesstojusticefoundation.org.uk its full distribution principles in the near future, and in due course it will publish a timetable and procedure for grant applications.

7. Chair of the Foundation, Lord Goldsmith QC PC, is European Chair of Litigation at Debevoise & Plimpton LLP and was formerly HM Attorney General.

8. General enquiries about the Foundation should be addressed to enquiries@atjf.org.uk

For media and press enquiries journalists can contact 0207 320 5902.