

## “How to” guide

### **Pro Bono Costs Orders**

*Section 194 of the Legal Services Act 2007 provides for ‘Pro Bono Costs Orders’. They are broadly equivalent to normal costs orders, and are available when the ‘winning’ party is represented pro bono. The ‘losing’ party is ordered to make a payment in an amount equivalent to legal costs to The Access to Justice Foundation, a charity which in turn will apply funds strategically to assist with the provision of pro bono services to others.*

1. Please seek a Pro Bono Costs Order whenever possible, at the same time and in the same way as normal costs orders. They are available in the county court, High Court and Court of Appeal. Pro Bono Costs payments can also be included in settlements and agreed orders.
2. They are available whenever a ‘winning’ (or settling) party has pro bono (free of charge) representation, even if representation was provided pro bono for only part of the case. However, they are not available if the ‘losing’ party was at all times also represented pro bono or under legal aid.
3. The court may order payment by a ‘losing’ party of a sum equivalent to all or part of the legal costs that would have been ordered to the ‘winning’ party, had the representation not been provided free. See CPR 44.3C. The court may use summary assessment (which as with normal costs should be used unless there is a good reason not to), or may order detailed assessment.
4. 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).
5. The order should provide for payment directly to the prescribed charity, *The Access to Justice Foundation*. See [www.accesstojusticefoundation.org.uk](http://www.accesstojusticefoundation.org.uk) for a suggested draft order. Within 7 days of receipt, the pro bono party must send a copy of the order to the Foundation (to PO Box 64162, London WC1A 9AN; or email a scanned copy to [enquiries@atjf.org.uk](mailto:enquiries@atjf.org.uk)).
6. Special care is needed where a case may have further stages such as a trial or appeal, as normal costs cannot be set off against Pro Bono Costs sums, and payments are not returnable in the event of a subsequent adverse costs order. Courts may therefore be asked to reserve costs with a liberty to apply (perhaps with a note on the court file indicating what Pro Bono Costs Order it would have otherwise made). The court conducting the final hearing can then be invited to make a single order, one way or the other, reflecting the justice of the case overall including interlocutory successes or failures.
7. Section 194 does not affect the potential liability of a pro bono assisted party to an adverse costs order.

- Visit [www.accesstojusticefoundation.org.uk](http://www.accesstojusticefoundation.org.uk) for further guidance, including a draft order, FAQs, and links to Section 194 and the CPR. Contact: [enquiries@atjf.org.uk](mailto:enquiries@atjf.org.uk)
- *White Book 2009: 44.3C - 44.3C.1 and 44PD.4.1. For Section 194 see 9B-550. (In the 2008 edition, see the 2<sup>nd</sup> cumulative supplement).*
- *The Green Book 2009 and Brown Book 2009 also reprint CPR 44.3C.*