

**KEYNOTE SPEECH AT THE
CITY LAW SCHOOL PRO BONO FAIR**

26 March 2009

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BY THE RT HON LORD GOLDSMITH QC PC

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I would like to thank Libby Holding for extending an invitation to speak at the Pro Bono Fair today – and I am delighted to see such a high turnout showing the interest in pro bono work amongst lawyers of the future.

I have two main issues to talk about this evening. The first is about pro bono work and why we all do it.

Increasing numbers of law schools are offering well run pro bono programmes these days. Many of you may have undertaken such work as an undergraduate; all of you will have the opportunity to do some at City Law School.

In fact you could say that we have reached a point where pro bono is seen as a highly desirable part of the training to become a lawyer, and rightly so. But that makes it even more important to remember why pro bono is so much a part of being a lawyer.

We live in a world that is increasingly dominated by legal considerations. Rules and regulations govern nearly every area of an individual's life –jobs, housing, education, finances, benefits and even relations with our neighbours.

When something happens that causes an individual to require advice on their rights or responsibilities in one of those situations, what do they do?

They can use their own funds to seek legal advice or assistance from a law firm or barrister.

They can seek legal aid if they do not have the funds to pay for their own advice. And I should make one thing clear at this stage, as I always do when I speak about pro bono. Pro bono is not a substitute for public funding. Rather, pro bono is a complement to a publicly funded legal service.

But there will always be an unmet legal need however generous a legal aid system is – and the demands for education, schools, hospitals, doctors, nurses, public services of all sorts means that legal aid can never be funded from a bottomless purse.

And thus there are people who will fall between the cracks. People in genuine need of help, but unable to secure legal aid funding and unable to pay for their own advice.

It is this group of people that pro bono work is intended to help.

A lawyer's core responsibility is to help people vindicate their rights and meet their responsibilities. If we accept this responsibility, we must also accept a professional duty of ensuring that justice is done to those who would otherwise fall between those cracks.

So by starting pro bono work at the vocational stage, you should realise that you are already accepting one of your professional duties; and in doing so you should ensure that you perform such work to the very best of your abilities.

That duty is something that I accepted early on in my own career, when I had the temerity to set up a free legal advice centre at Oxford House in Bethnal Green. I hatched the plot with a university friend who had become the warden of Oxford House and who told me the young people there were often in trouble with the police but distrusted lawyers as just another set of establishment figures and so did not seek advice when they should have done. Our idea was that I would not frighten these teenagers by coming in a lawyer's suit and tie with a briefcase but come in jeans as a helper at the weekly disco, get to know the kids and then casually drop that I could give them some advice.

That is what we did. I got to know them – tried my hand out as a DJ – not very well I have to say – Chris Moyles, Sarah Cox and the other Radio DJ's had nothing to fear from my competition - and started to offer some legal advice. This quickly spread from advising the teenagers to opening a legal advice centre for their parents and other adults in the area. They brought all manner of problems. I got other lawyers – some now very famous – Louise Christian the campaigning left wing lawyer and Andrew Trollope QC , now one of the leading criminal silks- involved and the Advice Centre expanded. We ran it on a shoe string with part-time secretaries who would type and despatch the letters we left for them dictated on tape. This was not ideal as we would not be able to check the letters before they went out. I remember one case where I was outraged by the response of an insurance company rejecting my demand for compensation for a workman injured by a falling hoist on the grounds the explanation of the incident was incredible – what was incredible about being hit by a falling hoist? Surely that was a typical risk in such cases until I checked my original letter to them which had asserted that what had hit him on a building site on the Bethnal Green Road was a falling horse.

The inaccuracy of the typing and the limitation on what we were supposed to do was not the only problem, I am sure, with what we did. It was temerity to offer this service as very young and not very experienced lawyers. But often there would be no legal aid

and we were often the only service available to guide ordinary men and women through the perplexing jungle of modern life, littered as it is with confusing legal traps and bewildering rules and regulations.

Later in life and using such authority as I had gained as Chairman of the Bar in 1995 I founded, and chaired for a number of years, the Bar Pro Bono Unit of which I am proud still to be the President. And when I became Attorney General I was pleased to be able to do some more in this field by setting up Domestic and International Pro Bono Co-ordinating Committees.

I have thus been fortunate enough to follow pro bono work from its early beginnings to the point it has now reached. Today, the vast majority of chambers and law firms perform pro bono work. According to LawWorks over 70% of law schools now have some kind of pro bono programme.

City Law School runs one of those pro bono programmes – a very strong one - and by participating you will all develop skills and experience that will serve you well in your future careers. I cannot encourage you enough to “do your bit” during your time here.

For the second part of my speech, I would like to use today as an opportunity. I want to call on all pro bono lawyers to begin applying for section 194 orders in their pro bono cases.

I realise that many of my audience today may not yet be familiar with Section 194 orders, so will first take some time to brief you on the background to Section 194.

One aspect of pro bono representation has long concerned me. In a standard case, both parties know that if they lose at court, they may be ordered to pay the other sides' legal costs. This gives both parties a good incentive to settle before court.

However, where one party is assisted on a pro bono basis the situation is very different. If the opposing side wins the pro bono assisted party may, as usual, be ordered to pay their costs.

Conversely if the opposing side loses and is ordered to pay the pro bono assisted party's costs, the very nature of pro bono assistance results in there being no legal costs for them to pay. Legal costs are only payable to meet the bill that the other party is obliged to pay. This is called the indemnity principle. But of course in a pro bono case, there is no bill to pay.

Where then, is the incentive for the opposing party to settle before court? Either way, it wins and the pro bono assisted party loses.

A Section 194 costs order doesn't sound particularly exciting, but for any pro bono lawyer walking into a negotiation with the other side, this order is the tool that finally balances the equation. In fact, I would go further and say that it places the pro bono lawyer in a "double your money" situation.

Where a pro bono assisted party wins its case, the court may now make a section 194 order in its favour. Put simply, if the pro bono lawyers provided pro bono legal advice and representation worth £10,000 on the 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.

The money from the order will be paid, not to the lawyers, but to the Access to Justice Foundation - more of which in a moment.

A section 194 order thus creates a "double your money" situation for pro bono lawyers in the following ways:

Firstly – 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.

Secondly 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.

How? The monies do not go to the original lawyer or to an individual pro bono organisation. Parliament decreed they go to a single charity – the Access to Justice Foundation - which will then 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 has a Board of Trustees taken from all parts of the legal and pro bono system – all three professional bodies, the judiciary, the voluntary sector and law firms.

I am honoured to be Chair of this Board and we are currently working to finalise the Distribution Principles so that, as funds come in, we are in a position to share them out.

A key issue when Section 194 was being debated in Parliament was to ensure that lawyers could express a preference as to where the Foundation might donate the funds received from that order.

If, for example, a particular pro bono charity had spent much time and money in providing pro bono assistance to a particular case, the lawyer might wish to draw the Foundation's attention to this by indicating a preference in favour of that organisation.

The Foundation will retain the ultimate discretion over funding decisions, to ensure a fair and strategic disbursement of funds in a way that will best service the pro bono sector, but will have regard to any such expressions of preference in doing so.

And thus, the pro bono lawyer has won for the client they could offer their professional skills to; but has also succeeded in securing funds to ensure other pro bono organisations continue to fight cases for their clients.

Now that I have outlined what section 194 actually is, the next question is inevitably how it will operate in practice.

The Section 194 regime was designed to be simple by following existing costs procedures as much as possible. 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.

I realise that many of you in the audience are not yet at a stage where you could claim a Section 194 order for a client.

However, when you begin pupillage or a training contract in autumn and are exposed to pro bono work being performed by your chambers or firm – remind the lawyers of Section 194 and encourage them to use it.

And as soon as you are able to represent your own clients, seek costs orders yourself. The more that lawyers use Section 194, the more people can be helped by the pro bono lawyers, organisations and charities across the country.

Section 194 came into force 6 months ago but it obviously takes time for cases to reach the court stage at which an order would be granted. However the Foundation has now received funds from its

* www.accesstojusticefoundation.org.uk

first, small Section 194 order – together with other donations - and we are being informed of other cases in the pipeline. All lawyers must make the most of the opportunity that section 194 offers and ensure they use it in their case.

One word of warning – do warn your pro bono client that they remain liable for the other party's costs if they lose in court, just as they did previously.

In closing, I will say three things.

Pro bono is an essential part of what makes you a lawyer. Do it now, do it when you are a junior lawyer; do it 20 years from now. Whatever stage you are at in your legal career, use your skills to help the person who would otherwise receive no help.

Every lawyer must make use of section 194, because in doing so you don't just assist one client – you may assist two. Make the most of that “double your money” opportunity.

And finally, when you do pro bono, you may sometimes find that you are recognised for your work. I have been asked to present three awards tonight to recognise some of the hard work performed at City Law School and I am delighted to do so.....