



THE  
ACCESS  
TO JUSTICE  
FOUNDATION

---

*Section 194 “pro bono costs orders”*

*‘...where a case has been won with pro bono help, and the losing party would otherwise have escaped liability for costs simply because it had lost to a party that had been helped pro bono.’*

From October 2008 the Courts in England & Wales will have power to order a losing party to make a payment to The Access to Justice Foundation, under section 194 of the Legal Services Act 2007 – a “pro bono costs order”.

This will be where a case has been won with pro bono help, and the losing party would otherwise have escaped liability for costs simply because it had lost to a party that had been helped pro bono.

The Access to Justice Foundation has been established to receive and help distribute these (and other) additional financial resources so as to help get free of charge (pro bono) legal assistance to those who need it. Taking a strategic view, the Foundation will distribute those monies to Regional Legal Support Trusts, to the major pro bono organisations, and to projects. The Regional Legal Support Trusts will in turn distribute to local advice agencies and law centres.

Amendments have been made to the Civil Procedure Rules and to Practice Directions to support section 194. Broadly speaking, seeking a section 194 order is like seeking an order for costs. The Court will need information from those who gave pro bono help to the winning party about the costs that would have been incurred had the winning party not received its legal assistance pro bono. The Court may use its summary assessment powers rather than require a detailed assessment.

It is not possible to get a section 194 order where both winning and losing parties were represented pro bono, nor where the losing party was in receipt of legal aid. Special care is needed where a section 194 order is being considered in a case that

may have further stages ahead or that may go on to an appeal.

Pro bono assistance provides access to justice for someone who cannot afford to pay for legal assistance and cannot get legal aid. Where the case is won, obtaining a section 194 order may help others in a like position gain access to justice in other cases.

*‘Broadly speaking, seeking a section 194 order is like seeking an order for costs.’*

### Key legislation

- ◆ Section 194 Legal Services Act 2007
- ◆ Amendments to CPR parts 3, 36, 38, 43, 44 and 47 made by The Civil Procedure (Amendment) Rules 2008 No. 2178 (L. 10)
- ◆ Amendments to the accompanying Practice Directions made by Practice Direction Amendments 47th Update

Guidance on section 194 is available on our website.