

PRO BONO COSTS ORDERS: GUIDANCE FOR JUDGES AND LAWYERS

THE
ACCESS
TO JUSTICE
FOUNDATION

Pro bono costs can be awarded where any party in a civil case has had free legal representation and would otherwise have been entitled to a costs order.

Under ss 194-194B Legal Services Act 2007, pro bono costs can be ordered by the court or be included in settlements.

In England & Wales, pro bono costs are available in the County Court, Family Court, High Court, Court of Appeal Civil Division and civil appeals before the Supreme Court. They are also available in Tribunals which have the power to award costs e.g., for unreasonable conduct (i.e. First Tier Tribunal, Upper Tribunal, Employment Tribunal, EAT and CAT).

In December 2024 in *Manolete Partners v White* (2024 EWCA Civ 1558) the Court of Appeal considered the matter in full and held:

“The underlying purpose of s194 is not only to place parties on an equal footing by putting the privately funded party at risk of an adverse costs order but also to provide a source of funding for and to encourage the provision of free legal assistance to those in need of it”.

The order should provide that payment is made to the prescribed charity, the Access to Justice Foundation (ATJF). ATJF provides funding to support organisations involved in the provision of free legal help to a wide cross section of the public who are in need. The benefits of legal representation to achieving just outcomes and to ensuring the best use of court time are incalculable.

The costs cover any period when free representation was provided and even if only one of the lawyers acted for free (i.e. normal costs can also be sought for the fee-paid work). The amount is based on what a paying client would recover.

STEP-BY-STEP

1. The jurisdiction arises under ss 194 to 194B Legal Services Act 2007. Where CPR applies see r. 46.7. The procedure is broadly the same as for normal costs.
2. Unless fixed costs apply, statements of costs should show what fee work was provided and how much it would have cost a paying client at the lawyer's normal rate.
3. Assess whether and how much costs would have been awarded for the pro bono party's representation, had it been on a free paying basis. Award the equivalent amount in pro bono costs. Summary assessment is encouraged.
4. Suggested wording for the order is:
The [party] must pay costs for pro bono representation on or before [date] to the Access to Justice Foundation (The Access to Justice Foundation, 7 Bell Yard, London WC2A 2JR), [summarily assessed at £____] [or] [to be assessed on the standard indemnity basis if not agreed].
5. The payee by statute must be the Access to Justice Foundation. The winning pro bono party must notify the Access to Justice Foundation and provide a copy of the costs order and contact details for the payor by emailing at costs@atjf.org.uk.