

Acting pro bono in a tribunal?

Please seek pro bono costs

From 28 June 2022, the new s.194A of the Legal Services Act 2007 enables UK tribunals to award pro bono costs. This mirrors the existing s.194 of the 2007 Act, which provides for pro bono costs in the civil courts of England and Wales.

Pro bono costs are like ordinary legal costs, but where a party had free of charge legal representation by a solicitor, barrister or advocate in England, Wales, Scotland or Northern Ireland.

The pro bono representation can be for all or part of the case and can even sit alongside paid representation.

Pro bono costs are now available in proceedings before the First-tier Tribunal, the Upper Tribunal, the Employment Tribunal, the Employment Appeal Tribunal, and the Competition Appeal Tribunal.

The key condition is that the tribunal would have had the power to award ordinary costs, had the representation been provided on a paid basis. For example, for unreasonable conduct.

The practice in the civil courts has been to treat pro bono costs as close as possible to ordinary costs. Accordingly, if ordinary costs would have been awarded in a particular case, the expectation is that the equivalent pro bono costs are awarded.

This involves making an assessment (usually summarily) of how much ordinary costs would have been awarded if the pro bono lawyer had charged for their time, and then awarding the equivalent sum of pro bono costs. This is assisted by the pro bono lawyer filing and serving a written statement showing how much they would have charged, based on their normal hourly rate for fee paying work (excluding VAT).

Unlike ordinary costs, pro bono costs are by statute payable to the prescribed charity, the Access to Justice Foundation. Suggested wording for the order has been used in numerous cases. After costs are awarded, the pro bono lawyer should inform the Foundation (costs@atjf.org.uk). The funds are then distributed by the Foundation to charities across the UK to support further access to justice.

The introduction of pro bono costs also helps level the playing field, by ensuring that there are equal adverse costs risks for all parties, even when facing a pro bono assisted party. This can help encourage reasonable litigation conduct and settlement.

Further information can be found at www.atjf.org.uk.

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- In correspondence and negotiation with the other side, consider highlighting your ability to obtain pro bono costs where normal costs are available. This may help settle the case, as they also have a costs risk.
- Ask the tribunal for a pro bono costs order under s.194A Legal Services Act 2007.
- Suggest this wording for the order:
The [party] must pay costs for pro bono representation on or before [date] to the Access to Justice Foundation, [summarily assessed at £____] [or] [to be assessed on the standard / indemnity basis if not agreed].
- Tell the Foundation when you secure pro bono costs (costs@atjf.org.uk)
- The tribunal orders the paying party to pay the costs to the Access to Justice Foundation
- The Foundation passes the money on to agencies giving free legal help to those in need

More information at www.atjf.org.uk or email costs@atjf.org.uk

THE
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