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# News Release

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## **Costs that count: Supreme Court now able to make pro bono costs orders**

Supreme Court cases where the winning party was represented by lawyers acting for no charge could now help others access justice, after a change to the law regarding 'pro bono' costs.

Section 61 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 received Royal Assent in May and will come into force on Monday (1 October). It enables the Supreme Court to make an order for costs, in cases from England and Wales, in favour of a specific charity which funds pro bono representation.

Up until now, the court has been unable to make such an order – meaning that, when the successful party technically has no costs, the unsuccessful party has avoided making any contribution. The new system will allow the Supreme Court to direct that the money that would usually have been recovered from the unsuccessful party to cover the other party's costs should instead be donated to the prescribed charity, the Access to Justice Foundation.

The Foundation ([www.accesstojusticefoundation.org.uk](http://www.accesstojusticefoundation.org.uk)) works strategically to facilitate support for those unable to afford legal advice, partly via a network of regional legal support trusts.

The move brings the Supreme Court in line with other courts dealing with civil matters in England and Wales, covered by section 194 of the Legal Services Act 2007. An amendment to that Act was tabled by Lord Pannick QC during debate over the Legal Aid Bill, and supported by all sides of the House of Lords at Report Stage.

Speaking to his amendment at the time, Lord Pannick QC explained:

“When [a] pro bono lawyer succeeds for the claimant or the defendant, the unsuccessful other party cannot be ordered to pay the costs of the proceedings because the successful litigant has no costs, or limited costs, having received pro bono assistance. The losing side would gain an unfair benefit and indeed an unfair advantage in the litigation.

**The Supreme Court of the United Kingdom**

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“Section 194 of the Legal Services Act 2007 has one small defect; it applies to the county courts, the High Court and the Court of Appeal but it does not apply to the Supreme Court. There is no sensible reason for not conferring this valuable power on the Supreme Court to make orders for payments to the prescribed charity in appropriate cases. Indeed, many cases in which lawyers act pro bono are heard by the Supreme Court.

“Justices of the Supreme Court and the Supreme Court users’ group have expressed the view that Section 194 should apply to the Supreme Court as it does to other courts.”

The new arrangements will apply to appeals against court orders made after 1 October 2012, so will only affect new Supreme Court cases from England and Wales rather than any currently pending.

## **Ends**

## **Notes to editors**

Sheriff Principal James Taylor is currently exploring the position regarding pro bono costs in Scotland as part of his Review of Expenses and Funding of Civil Litigation; work is ongoing in Northern Ireland to encourage more pro bono representation.

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