

14 July 2009

### **Pro bono case produces first substantial Section 194 order for £20,000**

Lawyers acting for free on behalf of housing charity Shelter have saved a vulnerable family from eviction and obtained the first substantial Section 194 “pro bono costs order” for £20,000 in the process, which will be recycled to help others get free legal help in the future.

The family of four have been told they can keep their home of 20 years after almost losing it in a ‘sale and leaseback’ scheme. They had been assured by the sale and leaseback company that by selling their home, they could pay off their mortgage and rent it back indefinitely. However, within two years they were about to be evicted by the new mortgagee. In a landmark decision the judge ruled that the family can either revert to being owner-occupiers or rent the property for the rest of their lives.

Shelter solicitors John Gallagher and Marie Burton, and barrister Andrew Walker of Maitland Chambers, acted for free (pro bono), assisted by Freshfields Bruckhaus Deringer LLP. As a result, they were able to call on Section 194 of the Legal Services Act 2007, a new costs provision that was specifically created for use in pro bono cases. Now, when a pro bono assisted party wins its case, the court may make a Section 194 order requiring the losing party to make a payment to the prescribed charity, the Access to Justice Foundation.

In deciding on the amount of the payment, the court considers the costs that would have been payable had the pro bono lawyers been charging for their services. In this case, in view of many months’ worth of advice and representation provided by the pro bono lawyers, the court made a Section 194 order that the losing party pay £20,000 to the Foundation. Previously where a case had been won with pro bono help the losing party would have escaped liability for costs.

All the monies from Section 194 orders go directly to the Access to Justice Foundation, which distributes funds to support the availability of more pro bono legal assistance in the future. This highlights the ‘double win’ benefit of the new legislation, since by helping this client, the pro bono lawyers enable others to be assisted for free.

Sandra Barton, a past President of the Institute of Legal Executives, and Trustee of the Foundation, said: “The Foundation is delighted to hear of this first substantial Section 194 order. This is an excellent example of the ‘double benefit’ under this new costs regime. Not only did the pro bono lawyers in this case provide vital access to justice for people who could not afford representation, but in seeking a Section 194 costs order they also obtained funds that will support pro bono advice and representation for yet more people in the future.”

In a recent speech former Attorney General Lord Goldsmith, Chairman of the Foundation, encouraged all lawyers acting pro bono to seek Section 194 costs orders whenever they win a case, in the same way they would seek a costs order for a fee-paying client.

**Notes to Editors:**

1. The Access to Justice Foundation is a registered charity, chaired by Lord Goldsmith QC, with trustees drawn from across the legal profession and the advice sector, reflecting that the scheme as a whole is a cross-profession initiative. For more information visit [www.accesstojusticefoundation.org.uk](http://www.accesstojusticefoundation.org.uk)

2. Section 194 of the Legal Services Act 2007 enables the Courts of England & Wales to require a party who loses a legal case against a party with pro bono help to make a payment to the Foundation in an amount equal to an order for costs (a “pro bono costs order”).

3. Broadly speaking, seeking a Section 194 order is like seeking an order for costs.

4. For more information on Section 194 visit [www.accesstojusticefoundation.org.uk/funds-in/section-194/](http://www.accesstojusticefoundation.org.uk/funds-in/section-194/)

5. General enquiries about the Foundation should be addressed to [enquiries@atjf.org.uk](mailto:enquiries@atjf.org.uk) For media and press enquiries contact 020 7320 5902.