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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**Access to Justice (Northern Ireland) Order 2003**

**PART III**

**OTHER FUNDING OF LEGAL SERVICES**

*Conditional fee and litigation funding agreements*

**Litigation funding agreements: costs**

**42.**—(1) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any amount payable under a litigation funding agreement.

(2) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a litigation funding agreement.

(3) In any proceedings—

- (a) to which an individual, for whom advocacy or litigation services relating to the proceedings, or to a part of the proceedings, are funded under a litigation funding agreement, is a party, and
- (b) which are finally decided in favour of a party for whom such services are not so funded (“the unfunded party”),

the court by which the proceedings were so decided may, subject to paragraph (4), make an order for the payment by the funder to the unfunded party of the whole or any part of the costs incurred by the unfunded party in the proceedings.

(4) An order under paragraph (3) in respect of any costs may only be made if an order for costs would be made in the proceedings apart from this Order.

(5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under paragraph (3), or against a refusal to make such an order, except on a point of law.

(6) In this Article “costs” means costs as between party and party, and includes the costs of applying for an order under paragraph (3).

(7) For the purposes of this Article proceedings shall be treated as finally decided in favour of the unfunded party—

- (a) if no appeal lies against the decision in his favour,
- (b) if an appeal lies against the decision with leave, and the time limited for applications for leave expires without leave being granted, or
- (c) if leave to appeal against the decision is granted or is not required, and no appeal is brought within the time limited for appeal,

and where an appeal against the decision is brought out of time the court by which the appeal (or any further appeal in those proceedings) is determined may make an order for the repayment by the

unfunded party to the funder of the whole or any part of any sum previously paid to the unfunded party under this Article in respect of those proceedings.

(8) Where a court decides any proceedings in favour of the unfunded party and an appeal lies (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under paragraph (3) forthwith, but if an order is made forthwith it shall not take effect—

- (a) where leave to appeal is required, unless the time limited for applications for leave to appeal expires without leave being granted;
- (b) where leave to appeal is granted or is not required, unless the time limited for appeal expires without an appeal being brought.

(9) Where a party begins to receive advocacy or litigation services funded by the funder after the proceedings have been instituted, or ceases to receive advocacy or litigation services so funded before they are finally decided, or otherwise receives advocacy or litigation services so funded in connection with part only of the proceedings, the reference in paragraph (3) to the costs incurred by the unfunded party in the proceedings shall be construed as a reference to so much of those costs as is attributable to that part.

(10) For the purposes of this Article “court” includes a tribunal.