
STATUTORY INSTRUMENTS

2000 No. 441

The Community Legal Service (Costs) Regulations 2000

PART III

PROPERTY AND COSTS RECOVERED FOR A FUNDED CLIENT

Application of this Part

14.—(1) In this Part:

“the awarded sum” means the amount of costs to be paid in accordance with a client’s costs order or a client’s costs agreement;

“client’s costs order” and “client’s costs agreement” mean, respectively, an order and an agreement that another party to proceedings or prospective proceedings pay all or part of the costs of a client;

“Fund” means the Community Legal Service Fund established under section 5 of the Act;

“the funded sum” means the amount of remuneration payable by the Commission to a supplier for the relevant work under a contract or any other arrangements that determine that supplier’s remuneration, including those that apply by virtue of article 4 of the Community Legal Service (Funding) Order 2000(1); and, where funding is provided by the Commission under a contract which does not differentiate between the remuneration for the client’s case and remuneration for other cases, means such part of the remuneration payable under the contract as may be specified in writing by the Commission as being the funded sum;

“relevant work” means the funded services provided in relation to the dispute or proceedings to which the client’s costs order or client’s costs agreement relates;

“remuneration” includes fees and disbursements and value added tax on fees and disbursements;

“statutory charge” means the charge created by section 10(7) of the Act.

Amount of costs under client’s costs order or client’s costs agreement

15.—(1) Subject to the following paragraphs of this regulation, the amount of the costs to be paid under a client’s costs order or client’s costs agreement shall, subject to regulation 16, be determined on the same basis as it would be if the costs were to be paid to a person who had not received funded services.

(2) Subject to paragraph (3), the amount of the awarded sum shall not be limited to the amount of the funded sum by any rule of law which limits the costs recoverable by a party to proceedings to the amount he is liable to pay to his legal representatives.

(3) Paragraph (2) applies only to the extent that the Commission has authorised the supplier under section 22(2)(b) of the Act to take payment for the relevant work other than that funded by the Commission.

Costs of serving notices and other documents

16. The amount of costs to be paid under a client's costs order or client's costs agreement may include costs incurred in filing with the court, or serving on any other party to proceedings, notices or any other documents in accordance with these Regulations, the Financial Regulations or the Funding Code.

Application of regulations 18 to 24

17.—(1) Regulations 18 to 24 apply only where funded services have been provided under a certificate.

(2) If the client is no longer being represented by a solicitor, all money to which regulation 18(1) applies shall be paid (or repaid) to the Commission, and all references in regulations 18(1) and 19 to the client's solicitor shall be construed as references to the Commission.

Money recovered to be paid to solicitor

18.—(1) Subject to the following paragraphs of this regulation, and to regulation 17(2), all money payable to or recovered by a client in connection with a dispute by way of damages, costs or otherwise, whether or not proceedings were begun, and whether under an order of the court or an agreement or otherwise, shall be paid to the client's solicitor, and only the client's solicitor shall be capable of giving a good discharge for that money.

(2) Paragraph (1) shall not apply to:

- (a) any periodical payment of maintenance; or
- (b) any money recovered or preserved by a client in any proceedings which:
 - (i) has been paid into, or remains in, court, and is invested for the client's benefit; and
 - (ii) under regulation 50 of the Financial Regulations, is not subject to the statutory charge.

(3) Where the client's solicitor has reason to believe that an attempt may be made to circumvent the provisions of paragraph (1), he shall inform the Commission immediately.

Notice to third parties

19.—(1) Where money is payable under regulation 18, and that money is payable by a trustee in bankruptcy, a trustee or assignee of a deed of arrangement, a liquidator of a company in liquidation, a trustee of a pension fund or any other third party ("the third party") the client's solicitor shall send to the third party notice that funded services have been funded for the client by the Commission.

(2) Notice under paragraph (1) shall operate as a request by the client that money payable under regulation 18 be paid to his solicitor, and shall be a sufficient authority for that purpose.

Solicitor to pay money recovered to Commission

20.—(1) The client's solicitor shall forthwith:

- (a) inform the Regional Director of any money or other property recovered or preserved, and send him a copy of the order or agreement by virtue of which the property was recovered or preserved;
- (b) subject to the following paragraphs of this regulation, pay to the Commission all money or other property received by him under regulation 18.

(2) Paragraph (1)(b) shall not apply to any money or other property to which the statutory charge does not apply, by virtue of the Financial Regulations.

(3) Where he considers it essential to protect the client's interests or welfare, the Regional Director shall pay, or direct the client's solicitor to pay, to the client any money received by way of any interim payment made in accordance with an order made under CPR rule 25.6, or in accordance with an agreement having the same effect as such an order.

(4) The Regional Director may direct the client's solicitor to:

- (a) pay to the Commission under paragraph (1)(b) only such sums as, in the Regional Director's opinion, should be retained by the Commission in order to safeguard its interests; and
- (b) pay any other money to the client.

(5) Where the solicitor pays money to the Commission in accordance with this regulation, he shall identify what sums relate respectively to:

- (a) costs;
- (b) damages;
- (c) interest on costs; and
- (d) interest on damages.

Postponement of statutory charge

21.—(1) In this regulation:

“conveyancer” means a solicitor or any other person who lawfully provides conveyancing services;

“family proceedings” means proceedings which arise out of family relationships, including proceedings in which the welfare of children is determined. Family proceedings also include all proceedings under any one or more of the following:

- (a) the Matrimonial Causes Act 1973⁽²⁾;
- (b) the Inheritance (Provision for Family and Dependents) Act 1975⁽³⁾;
- (c) the Adoption Act 1976⁽⁴⁾;
- (d) the Domestic Proceedings and Magistrates' Courts Act 1978⁽⁵⁾;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984⁽⁶⁾;
- (f) Parts I, II and IV of the Children Act 1989⁽⁷⁾;
- (g) Part IV of the Family Law Act 1996⁽⁸⁾; and
- (h) the inherent jurisdiction of the High Court in relation to children;

“purchase money” means money recovered or preserved by the client in family proceedings which, by virtue of an order of the court or an agreement, is to be used to purchase a home to be used by the client or the client's dependants, and “the purchased property” means the property purchased or to be purchased with that money.

(2) The following paragraphs of this regulation apply, and (subject to paragraph (6)) regulation 20(1)(b) does not apply, where the Commission decides to postpone enforcement of the statutory charge under regulation 52 of the Financial Regulations.

(2) 1973 c. 18.
(3) 1975 c. 63.
(4) 1976 c. 36.
(5) 1978 c. 22.
(6) 1984 c. 42.
(7) 1989 c. 41.
(8) 1996 c. 27.

(3) The solicitor may release the purchase money to the seller or the seller's representative on completion of the purchase of the purchased property; and shall as soon as practicable provide the Commission with sufficient information to enable it to protect its interest in accordance with regulation 52(1)(c) of the Financial Regulations.

(4) The client's solicitor may release the purchase money to a conveyancer acting for the client in the purchase of the purchased property, if he is satisfied that adequate steps have been, or will be, taken to protect the interests of the Commission.

(5) The steps referred to in paragraph (4) shall include, but are not limited to, the securing of an undertaking from the conveyancer referred to in that paragraph to:

- (a) provide the information referred to in paragraph (3); and
- (b) repay the purchase money under paragraph (6).

(6) Where the purchase of the purchased property has not been completed within 12 months after the date of the Commission's decision referred to in paragraph (2), or such longer period as the Commission considers reasonable, regulation 20(1)(b) shall apply and the purchase money shall accordingly be repaid to the Commission.

Retention and payment out of money by the Commission

22.—(1) The Commission shall deal with the money paid to it under this Part in accordance with this regulation.

(2) The Commission shall retain:

- (a) an amount equal to the costs incurred in taking steps under regulation 23;
- (b) an amount equal to that part of the funded sum already paid to the supplier in respect of the relevant work; and
- (c) where costs are paid to the Commission together with interest, an amount equal to that interest, less the amount of any interest payable to the supplier under paragraph (3)(b)(ii).

(3) The Commission shall pay to the supplier:

- (a) any outstanding amount of the funded sum payable to him in respect of the relevant work;
- (b) where costs are ordered or agreed to be paid to the client, and those costs are received by the Commission, and those costs (less any amount retained under paragraph (2)(a) or payable under paragraph (5)) exceed the funded sum:
 - (i) an amount equal to the amount of the excess; and
 - (ii) where those costs are paid to the Commission together with interest, an amount equal to the interest attributable to the excess referred to in sub-paragraph (i).

(4) Paragraph (5) applies where a solicitor has acted on behalf of the client in proceedings before that client receives funded services in respect of the same proceedings, or has a lien on any documents necessary to proceedings to which a client is a party, and has handed them over subject to the lien, but applies only so far as is consistent with the express terms of any contract between the Commission and the solicitor.

(5) Where the solicitor referred to in paragraph (4) gives the Commission written notice that this paragraph applies, the Commission shall pay to that solicitor the costs to which that solicitor would have been entitled if those costs had been assessed on an indemnity basis.

(6) Where the amount of costs payable under paragraph (5) have not been assessed by the court, they may instead be assessed by the Commission.

(7) Where the amount received by the Commission, less any amount retained under paragraph (2)(a), is insufficient to meet the funded sum and any sum payable under paragraph (5), the Commission shall apportion the amount received proportionately between the two.

(8) The Commission shall pay all the money paid to it under this Part, which is not paid or retained under paragraphs (2) to (5), to the client.

Enforcement of orders etc in favour of client

23.—(1) Where, in relation to any dispute to which a client is a party, whether or not proceedings are begun:

- (a) an order or agreement is made providing for the recovery or preservation of property by the client (whether for himself or any other person); or
- (b) there is a client's costs order or client's costs agreement

the Commission may take any steps, including proceedings in its own name, as may be necessary to enforce or give effect to that order or agreement.

(2) A client may, with the consent of the Regional Director, take proceedings to give effect to an order or agreement under which he is entitled to recover or preserve money or other property.

(3) Subject to paragraph (4), the client's solicitor may take proceedings for the recovery of costs where a client's costs order or a client's costs agreement has been made.

(4) Where the client's costs order or client's costs agreement relates wholly or partly to costs incurred in carrying out work which is remunerated, or to be remunerated, in the funded sum, but those costs have not been reimbursed by payment from any other party in favour of the client, the solicitor shall require the consent of the Regional Director before taking proceedings to which paragraph (3) refers.

(5) Where the Commission takes proceedings, it may authorise any person to make a statement, file a proof or take any other step in the proceedings in its name.

(6) The costs incurred by the Commission in taking any step to enforce an order or agreement where paragraph (1) applies shall be a first charge on any property or sum so recovered.

Interest on damages

24.—(1) Where the Commission receives damages paid in favour of a client it shall, subject to the following paragraphs, pay to the client a sum representing gross interest earned while the damages are being held by the Commission.

(2) Without prejudice to its other powers to invest money, the Commission shall maintain and may deposit damages to which this regulation refers in one general account at a bank or building society.

(3) The rate of interest payable to the client under this regulation shall be 0.5% per annum less than the rate payable on damages deposited in the general account.

(4) The Commission shall not be required to pay interest where the damages received do not exceed £500 or where the period during which they are held by the Commission is less than 28 days.

(5) Interest shall be payable for the period beginning on the third business day after the date on which damages are received by the Commission to and including the date on which the Commission determines the amount to be paid under regulation 22(8).

(6) In this regulation:

“bank” means the Bank of England, or the branch, situated in England or Wales, of any institution authorised under the Banking Act 1987⁽⁹⁾;

(9) 1987 c. 22.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“building society” means the branch, situated in England or Wales, of a building society within the meaning of the Building Societies Act 1986⁽¹⁰⁾;

“business day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971⁽¹¹⁾;

“general account” means an interest bearing account opened in the name of the Commission, the title of which does not identify any client.

⁽¹⁰⁾ 1986 c. 53.

⁽¹¹⁾ 1971 c. 80.