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STATUTORY INSTRUMENTS

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**2013 No. 503**

**The Civil Legal Aid (Statutory Charge) Regulations 2013**

**PART 3**

**ENFORCEMENT OF THE STATUTORY CHARGE**

**Application of regulations 13 to 19**

**12.**—(1) Regulations 13 to 19 apply where civil legal services have been made available under a determination in relation to which a certificate was issued.

(2) Where a legally aided party is no longer being represented by a provider, all money to which regulation 13(1) applies must be paid to the Lord Chancellor, and a reference in regulation 13(1) or 14 to the provider is to be construed as a reference to the Lord Chancellor.

**Money recovered to be paid to the provider**

**13.**—(1) All money payable to or recovered by a legally aided party in relevant proceedings or a relevant dispute, whether under a court order or an agreement or otherwise, must be paid to the legally aided party's provider, and only that provider is capable of giving good discharge for the money.

(2) Paragraph (1) does not apply to—

- (a) any periodical payment of maintenance; or
- (b) any money which, in accordance with regulation 11, is not subject to the statutory charge.

(3) Where a legally aided party's provider, or former provider, has reason to believe that an attempt may be made to circumvent the provisions of paragraph (1), the provider or former provider must inform the Lord Chancellor immediately.

**Notice to third parties**

**14.**—(1) Where money is payable under regulation 13 by a person other than a party to the proceedings, the legally aided party's provider must give that person notice in writing that civil legal services have been made available to the legally aided party by the Lord Chancellor.

(2) Notice under paragraph (1) must state that—

- (a) it is a request that the money payable in accordance with regulation 13 is to be paid to the legally aided party's provider; and
- (b) the notice is sufficient authority for that payment to be made.

**Provider to pay money recovered to the Lord Chancellor**

**15.**—(1) The legally aided party's provider must without delay—

- (a) inform the Lord Chancellor of any money or other property recovered or preserved;

- (b) send to the Lord Chancellor a copy of any order or agreement under which the money or other property was recovered or preserved; and
  - (c) subject to paragraphs (2) and (3) and regulation 16, pay to the Lord Chancellor all money received by the provider by virtue of regulation 13.
- (2) Paragraph (1)(c) does not apply to any money which is not subject to the statutory charge by virtue of regulation 5.
- (3) The Lord Chancellor may authorise the legally aided party's provider to—
- (a) pay to the Lord Chancellor under paragraph (1)(c) only such amount as in the opinion of the Lord Chancellor is necessary to safeguard the Lord Chancellor's interests;
  - (b) retain, after payment of any amount under sub-paragraph (a), any amount received under a legally aided party's costs order or agreement; and
  - (c) pay any other money to the legally aided party.
- (4) Where the provider pays money to the Lord Chancellor in accordance with this regulation, the provider must specify what sums relate to—
- (a) costs;
  - (b) damages;
  - (c) interest on costs; and
  - (d) interest on damages.

### **Interim payments**

#### **16. Where—**

- (a) an order under CPR rule 25.6 (interim payments), or an agreement having equivalent effect, has been made; and
- (b) the Lord Chancellor considers it essential to protect the legally aided party's interests or welfare;

the Lord Chancellor must pay, or direct the legally aided party's provider to pay, any money paid by virtue of that order or agreement to the legally aided party.

### **Payment out and retention of money by the Lord Chancellor**

#### **17.—(1) The Lord Chancellor must pay to the provider—**

- (a) any outstanding amount payable under the arrangements to the provider in respect of services provided to the legally aided party in relevant proceedings or a relevant dispute;
- (b) where costs under a legally aided party's costs order or costs agreement are received by the Lord Chancellor, any amount by which—
  - (i) the amount under that order or agreement, after deduction of any amount under paragraph (2)(b),(4) or (6); exceeds
  - (ii) the total amount payable under the arrangements to the provider in respect of civil legal services made available in the relevant proceedings or relevant dispute, after deduction of any legal aid only costs; and
- (c) where the costs referred to in sub-paragraph (b) are paid to the Lord Chancellor with interest, an amount equal to interest attributable to any amount payable under that sub-paragraph.

(2) Where money is received by the Lord Chancellor under this Part, the Lord Chancellor must, subject to paragraph (6), retain—

- (a) an amount equal to that part of the total cost of the civil legal services made available to the legally aided party in relevant proceedings or a relevant dispute which form part of the statutory charge;
  - (b) an amount equal to the costs incurred in taking steps under regulation 18; and
  - (c) where costs are paid to the Lord Chancellor together with interest, an amount equal to that interest, less the amount of any interest payable to the provider under paragraph (1)(c).
- (3) Paragraph (4) applies where—
- (a) money is received by the Lord Chancellor under this Part; and
  - (b) a solicitor, whether or not a provider, has acted on behalf of a legally aided party in proceedings or a dispute before that party receives civil legal services in respect of the same proceedings or dispute, or has a lien on any documents necessary to proceedings to which a legally aided party is party, and has handed them over subject to the lien.
- (4) Where this paragraph applies, and the solicitor referred to in paragraph (3) gives the Lord Chancellor written notice to that effect, the Lord Chancellor must, subject to paragraph (6), pay to that solicitor the costs to which the solicitor would have been entitled if those costs had been assessed on an indemnity basis.
- (5) Where the amount of costs payable under paragraph (4) have not been assessed by the court, they may be assessed by the Lord Chancellor.
- (6) Where the amount received by the Lord Chancellor under this Part, after deduction of any amount under paragraph (2)(b), is insufficient to meet—
- (a) the total amount payable to the provider under the arrangements in respect of the civil legal services made available to the legally aided party in the relevant proceedings or relevant dispute; and
  - (b) the amount payable to a solicitor under paragraph (4),
- the Lord Chancellor must apportion the amount received proportionately between the Lord Chancellor and the solicitor, and pay to the solicitor the amount so apportioned.
- (7) The Lord Chancellor must pay all the money paid to the Lord Chancellor under this Part, which is not paid or retained under paragraphs (1)(b), (1)(c), (2), (4) or (6) to the legally aided party.
- (8) In this regulation, “solicitor” means a person who, for the purposes of the Legal Services Act 2007<sup>M1</sup>, is an authorised person in relation to an activity which constitutes the conduct of litigation within the meaning of that Act.

**Marginal Citations**

M1 2007 c. 29.

**Enforcement of orders etc in favour of a legally aided party**

**18.**—(1) The Lord Chancellor may take such steps, including bringing proceedings, as may be necessary to enforce or give effect to—

- (a) an order or agreement made in relevant proceedings or a relevant dispute in favour of a legally aided party (whether for that party or another person) providing for the recovery or preservation of property; or
- (b) a legally aided party's costs order or costs agreement.

(2) A legally aided party may bring proceedings to enforce or give effect to any order or agreement described in paragraph (1) only with the consent of the Lord Chancellor.

(3) A legally aided party's provider may bring proceedings for the recovery of costs where a legally aided party's costs order or costs agreement has been made.

(4) Where—

- (a) the costs order or agreement relates wholly or partly to costs incurred in carrying out work which is paid, or payable, to the provider by the Lord Chancellor in respect of the civil legal services; and
- (b) those costs have not been reimbursed by payment from any other party in favour of the legally aided party

the provider may bring proceedings under paragraph (3) only with the consent of the Lord Chancellor.

(5) The costs incurred by the Lord Chancellor in taking any step to enforce or give effect to an order or agreement under paragraph (1) are to be a first charge on any property or costs recovered as a result of taking any such step.

**Interest on damages**

**19.**—(1) Where the Lord Chancellor receives damages paid in favour of a legally aided party, the Lord Chancellor must—

- (a) deposit those damages in one general account at a deposit-taker; and
- (b) except where paragraph (3) applies, pay the legally aided party a sum representing the gross rate of interest earned on the damages while they are held by the Lord Chancellor.

(2) The interest payable to the legally aided party under paragraph (1)(b) is to be calculated—

- (a) at a rate of 0.5% per annum less than the rate payable on damages deposited in the general account; and
- (b) for the period beginning with the third business day after the date on which the damages are received by the Lord Chancellor, and ending with the date on which the Lord Chancellor determines the amount to be paid to the legally aided party by virtue of regulation 17(7).

(3) The Lord Chancellor is not required to pay interest where the damages received—

- (a) are £500 or less; or
- (b) are held by the Lord Chancellor for less than 28 days.

(4) In this regulation—

(a) “business day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 <sup>M2</sup>;

(b) “deposit taker” means the Bank of England, or a branch of <sup>F1</sup>...—

(i) a person with permission to accept deposits under Part 4A of the Financial Services and Markets Act 2000 <sup>M3</sup> (permission to carry on regulated activities); <sup>F2</sup>...

<sup>F2</sup>(ii) ..... and

(c) “general account” means an interest bearing account opened in the name of the Lord Chancellor, the title of which does not identify any legally aided party.

(5) The definition of “deposit taker” under paragraph (4)(b) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000 (regulated activities);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act (regulated activities).

### Textual Amendments

- F1** Word in reg. 19(4)(b) omitted (31.12.2020) by virtue of [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1149), reg. 1(3), **Sch. para. 75(a)** (with reg. 4); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Reg. 19(4)(b)(ii) and word omitted (31.12.2020) by virtue of [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1149), reg. 1(3), **Sch. para. 75(b)** (with reg. 4); 2020 c. 1, Sch. 5 para. 1(1)

### Marginal Citations

- M2** 1971 c. 80.
- M3** 2000 c. 8; [Part 4A](#) is inserted into the 2000 Act by section 11 of the [Financial Services Act 2012](#) (c. 21), to be commenced on 1 April 2013.

## Application of regulations 21 to 25

20. Regulations 21 to 25 apply where the statutory charge is in favour of the Lord Chancellor.

## Enforcement of the statutory charge

21. The Lord Chancellor may enforce the statutory charge in any manner which would be available to a chargee in respect of a charge given between parties to proceedings.

## Postponement of the enforcement of the statutory charge

22.—(1) The Lord Chancellor may postpone the enforcement of the statutory charge if—

- (a) by order of the court or agreement, it relates—
- (i) to property to be used as a home by the legally aided party or the legally aided party's dependants; or
  - (ii) where the relevant proceedings are family proceedings, to money to pay for such a property;
- (b) the Lord Chancellor is satisfied that the property referred to in paragraph (1)(a) will provide appropriate security for the statutory charge; and
- (c) the Lord Chancellor considers that it would be unreasonable for the legally aided party to repay the amount of the charge.

(2) Where the Lord Chancellor postpones the statutory charge under this regulation, the Lord Chancellor must, as soon as it is possible to do so, take steps to secure the amount of the statutory charge by—

- (a) registering a charge under the Land Registration Act 2002<sup>M4</sup>; or
- (b) taking equivalent steps (whether in England and Wales or another jurisdiction) to protect the Lord Chancellor's interest in the property.

(3) Where the legally aided party wishes to purchase a property in substitution for the property over which a charge (or equivalent) is registered by virtue of paragraph (2), the Lord Chancellor may release that charge if the Lord Chancellor—

- (a) is satisfied that the new property will provide appropriate security for the statutory charge; and
- (b) the Lord Chancellor takes the steps in paragraph (2) in relation to the new property.

(4) Without prejudice to the provisions of the Land Registration Act 2002 and the Land Charges Act 1972<sup>M5</sup>, all conveyances and acts done to defeat, or operating to defeat, any charge, shall, except in the case of a bona fide purchaser without notice, be void as against the Lord Chancellor.

(5) Where the enforcement of the statutory charge is postponed under this regulation—

- (a) interest shall accrue for the benefit of the Lord Chancellor in accordance with regulation 25; and
- (b) such interest is an amount for the purposes of the amount of the statutory charge under section 25(2) of the Act.

#### **Marginal Citations**

**M4** 2002 c. 9.

**M5** 1972 c. 61.

#### **Further provision about postponement**

**23.**—(1) Regulation 15(1)(c) does not apply where the Lord Chancellor postpones the enforcement of the statutory charge under regulation 22.

(2) Paragraphs (3) to (6) apply where the Lord Chancellor postpones the enforcement of the statutory charge under regulation 22.

(3) The provider may release the purchase money to the seller or the seller's representative on completion of the purchase of the purchased property and must as soon as possible provide the Lord Chancellor with sufficient information to enable the Lord Chancellor to take the steps described in regulation 22(2).

(4) The provider may release the purchase money to a conveyancer acting for the legally aided party in the purchase of the purchased property if the provider is satisfied that adequate steps have been, or will be, taken to protect the Lord Chancellor's interests.

(5) The steps referred to in paragraph (4) must include the securing of an undertaking from the conveyancer 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 Lord Chancellor's decision to postpone enforcement of the statutory charge, or such longer period as the Lord Chancellor considers reasonable, regulation 15(1)(c) applies and the purchase money must be paid to the Lord Chancellor.

(7) In this regulation—

- (a) “conveyancer” means a person who lawfully provides conveyancing services;
- (b) “purchase money” means money recovered or preserved by a legally aided party in the circumstances described in regulation 22(1)(a)(ii); and
- (c) “purchased property” means the property purchased or to be purchased with the purchase money.

#### **Review of postponement**

**24.**—(1) The Lord Chancellor may review a decision to postpone the enforcement of the statutory charge at any time and where on doing so considers that the conditions in regulation 22(1) are no longer satisfied, the Lord Chancellor must enforce the charge.

(2) Where after a review the Lord Chancellor further postpones enforcement of the statutory charge—

- (a) it may be postponed on such terms and conditions as to repayment by way of interim payments of either capital or interest, or both, as appear to the Lord Chancellor appropriate; and
- (b) interest shall continue to accrue in accordance with regulation 25.

**Payment and recovery of interest**

**25.**—(1) Where interest accrues under regulation 22(5)(a)—

- (a) that interest shall accrue from the date when the charge is first registered;
- (b) that interest shall continue to accrue until the amount of the statutory charge is paid;
- (c) the applicable rate shall be 8% per annum; and
- (d) the capital on which it is calculated shall be the lesser of—
  - (i) the amount of the statutory charge outstanding from time to time, less any interest accrued under regulation 22(5)(a); and
  - (ii) the value of the property recovered at the time of such recovery.

(2) The legally aided party may make interim payments of either capital or interest, or both, in respect of the outstanding amount of the statutory charge, but no interim payment may be used to reduce the capital outstanding while any interest remains outstanding.

**Changes to legislation:**

There are currently no known outstanding effects for the The Civil Legal Aid (Statutory Charge) Regulations 2013, PART 3.