

The Community Legal Service (Cost Protection) Regulations 2000 (as amended)

(S.I. 2000 No. 824)

These Regulations have been amended by the Community Legal Service (Cost Protection) Regulations 2001 (S.I. 2001 No. 823) with effect from 2 April 2001 and the Community Legal Service (Cost Protection) Regulations 2001 (S.I. 2001 No. 3812) with effect from 3 December 2001. Amendments are shown in bold.

Legal Services Commission, England and Wales

Made 20th March 2000

Coming into force 1st April 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 11(1), (3) and (4)(b) and (d) of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament:

1. Citation and commencement

These Regulations may be cited as the Community Legal Service (Cost Protection) Regulations 2000 and shall come into force on 1st April 2000.

2. Interpretation

(1) In these Regulations:

“the Act” means the Access to Justice Act 1999;

“certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client and

“emergency certificate” means a certificate certifying a decision to fund Legal Representation for the client in a case of emergency;

“client” means an individual who receives funded services;

“Commission” means the Legal Services Commission established under section 1 of the Act;

“costs judge” has the same meaning as in the Civil Procedure Rules 1998¹;

“costs order” means an order that a party pay all or part of the costs of proceedings;

¹ Inserted by the Community Legal Service (Cost Protection) Regulations 2001 (S.I. 2001 No. 823).

“cost protection” means the limit on costs awarded against a client set out in section 11(1) of the Act;

“court” includes any tribunal having the power to award costs in favour of, or against, a party;

“full costs” means, where a section 11(1) costs order is made against a client, the amount of costs which that client would, but for section 11(1) of the Act, have been ordered to pay;

“funded proceedings” means proceedings (including prospective proceedings) in relation to which the client receives funded services or, as the case may be, that part of proceedings during which the client receives funded services;

“funded services” means services which are provided directly for a client and funded for that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

“Funding Code” means the code approved under section 9 of the Act;

“non-funded party” means a party to proceedings who has not received funded services in relation to those proceedings under a certificate, other than a certificate which has been revoked;

“partner” means a person with whom the person concerned lives as a couple, and includes a person with whom the person concerned is not currently living but from whom he is not living separate and apart;

“proceedings” include proceedings in any tribunal which is a court, as defined in this paragraph;

“receiving party” means a party in favour of whom a costs order is made;

“section 11(1) costs order” means a costs order against a client where cost protection applies;

“solicitor” means a solicitor or another person who is an authorised litigator within the meaning of section 119(1) of the Courts and Legal Services Act 1990.

- (2) References to the levels of service listed in paragraph (3) shall be construed as references to the receipt or provision of those levels of service granted in accordance with the Funding Code.
- (3) The levels of service referred to in paragraph (2) are:
 - (a) Legal Help;
 - (b) Help at Court;
 - (c) Legal Representation;

- (d) Approved Family Help;
- (e) Investigative Support;
- (f) Litigation Support.

3. Cost protection

- (1) Cost protection shall not apply in relation to such parts of proceedings, or prospective proceedings, as are funded for the client by way of:
 - (a) Help at Court or Litigation Support;
 - (b) Investigative Support, except where any proceedings in respect of which the Investigative Support was given are not pursued (whether or not as funded proceedings) after the certificate for Investigative Support is discharged;
 - (c) subject to paragraph (2), Legal Help.
- (2) Subject to paragraph (4), where the client receives Legal Help, but later receives Legal Representation or Approved Family Help in respect of the same dispute, cost protection shall apply, both in respect of:
 - (a) the costs incurred by the receiving party before the commencement of proceedings which, as regards the client, are funded proceedings by virtue of the client's receipt of Legal Help, and
 - (b) the costs incurred by the receiving party in the course of proceedings which, as regards the client, are funded proceedings by virtue of the client's receipt of Legal Representation or Approved Family Help.
- (3) Subject to paragraph (4), cost protection shall apply only to costs incurred by the receiving party in relation to proceedings which, as regards the client, are funded proceedings, and:
 - (a) where work is done before the issue of a certificate, cost protection shall (subject to paragraphs (2) and (5)) apply only to costs incurred after the issue of the certificate;
 - (b) where funding is withdrawn by discharging the client's certificate, cost protection shall apply only to costs incurred before the date when funded services under the certificate ceased to be provided.
- (4) Where funding is withdrawn by revoking the client's certificate, cost protection shall not apply, either in respect of work done before or after the revocation.
- (5) Cost protection shall apply to work done immediately before the grant of an emergency certificate if:

- (a) no application for such a certificate could be made because the Commission's office was closed; and
- (b) the client's solicitor applies for an emergency certificate at the first available opportunity, and the certificate is granted.

4. Enforcement of costs order against client

Where, for the purpose of enforcing a costs order against a client (alone or together with any other judgment or order), a charging order under section 1 of the Charging Orders Act 1979 is made in respect of the client's interest in the main or only dwelling in which he resides:

- (a) that charging order shall operate to secure the amount payable under the costs order (including, without limitation, any interest) only to the extent of the amount (if any) by which the proceeds of sale of the client's interest in the dwelling (having deducted any mortgage debts) exceed £100,000; and
- (b) an order for the sale of the dwelling shall not be made in favour of the person in whose favour the charging order is made.

5. Costs order against Commission

- (1) The following paragraphs of this regulation apply where:
 - (a) funded services are provided to a client in relation to proceedings;
 - (b) those proceedings are finally decided in favour of a non-funded party; and
 - (c) cost protection applies.
- (2) The court may, subject to the following paragraphs of this regulation, make an order for the payment by the Commission to the non-funded party of the whole or any part of the costs incurred by him in the proceedings (other than any costs that the client is required to pay under a section 11(1) costs order).
- (3) An order under paragraph (2) may only be made if all the conditions set out in sub-paragraphs (a), (b), (c) and (d) are satisfied:
 - (a) a section 11(1) costs order is made against the client in the proceedings, and the amount (if any) which the client is required to pay under that costs order is less than the amount of the full costs;
 - (b) **unless there is a good reason for the delay²**, the non-funded party makes a request under regulation 10(2) of the Community Legal Service (Costs) Regulations 2000 within three months of the making of the section 11(1) costs order;

² Inserted by the Community Legal Service (Cost Protection) Regulations 2001 (S.I. 2001 No. 3812).

- (c) as regards costs incurred in a court of first instance, the proceedings were instituted by the client, **the non-funded party is an individual**,³ and the court is satisfied that the non-funded party will suffer *severe*⁴ financial hardship unless the order is made; and
 - (d) in any case, the court is satisfied that it is just and equitable in the circumstances that provision for the costs should be made out of public funds.
- (3A) An order under paragraph (2) may be made—**
- (a) in relation to proceedings in the House of Lords, by the Clerk to the Parliaments;**
 - (b) in relation to proceedings in the Court of Appeal, High Court or a county court, by a costs judge or a district judge;**
 - (c) in relation to proceedings in a magistrates' court, by a single justice or by the justices' clerk;**
 - (d) in relation to proceedings in the Employment Appeal Tribunal, by the Registrar of that tribunal.**⁵
- (4) Where the client receives funded services in connection with part only of the proceedings, the reference in paragraph (2) to the costs incurred by the non-funded party in the relevant proceedings shall be construed as a reference to so much of those costs as is attributable to the part of the proceedings which are funded proceedings.
 - (5) Where a court decides any proceedings in favour of the non-funded party and an appeal lies (with or without permission) against that decision, any order made under this regulation shall not take effect:
 - (a) where permission to appeal is required, unless the time limit for applications for permission to appeal expires without permission being granted;
 - (b) where permission to appeal is granted or is not required, unless the time limit for appeal expires without an appeal being brought.
 - (6) Subject to paragraph (7), in determining whether the conditions in paragraph (3)(c) and (d) are satisfied, the court shall have regard to the resources of the non-funded party and of his partner.

³ Inserted by the Community Legal Service (Cost Protection) Regulations 2001 (S.I. 2001 No. 3812).

⁴ By virtue of the Community Legal Service (Cost Protection) Regulations 2001 (S.I. 2001 No. 3812) the word in italic shall not apply to applications for funded services made on or after 3 December 2001.

⁵ Regulation 5 (3A) was inserted by the Community Legal Service (Cost Protection) Regulations 2001 (S.I. 2001 No. 823).

- (7) The court shall not have regard to the resources of the partner of the non-funded party if the partner has a contrary interest in the funded proceedings.
- (8) Where the non-funded party is acting in a representative, fiduciary or official capacity and is entitled to be indemnified in respect of his costs from any property, estate or fund, the court shall, for the purposes of paragraph (3), have regard to the value of the property, estate or fund and the resources of the persons, if any, including that party where appropriate, who are beneficially interested in that property, estate or fund.

6. Orders for costs against Commission—Litigation Support

- (1) Paragraph (2) applies where:
 - (a) the client receives Litigation Support and the certificate is not revoked;
 - (b) the client has effected insurance against liability in respect of costs in the proceedings, or has made other arrangements, approved by the Commission as being equivalent to such insurance;
 - (c) the amount of liability insured under that insurance (or covered by those other arrangements) is subject to a maximum which has been approved by the Commission; and
 - (d) a costs order has been made against the client in favour of a non-funded party and the actual amount of the client's liability in respect of costs under that costs order exceeds the maximum referred to in sub-paragraph (c).
- (2) Where this paragraph applies, the amount of the excess referred to in paragraph (1)(d) shall, subject to paragraph (3), be paid by the Commission, not by the client, and the court shall order accordingly.
- (3) The amount of the Commission's liability under this regulation shall not exceed the reasonable costs of the non-funded party incurred during the period in which Litigation Support was provided.

7. Effect of these Regulations

- (1) No order to pay costs in favour of a non-funded party shall be made against the Commission in respect of funded proceedings except in accordance with these Regulations, and any costs to be paid under such an order shall be paid out of the Community Legal Service Fund.
- (2) Nothing in these Regulations shall be construed, in relation to proceedings where one or more parties are receiving, or have received, funded services, as:
 - (a) requiring a court to make a costs order where it would not otherwise have made a costs order; or

- (b) affecting the court's power to make a wasted costs order against a legal representative.

Irvine of Lairg, C.

Dated 20th March 2000

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations also contain provisions relating to the enforcement of an order for costs against a funded client.