

## The Community Legal Service (Costs) Regulations 2000 (as amended)

(S.I. 2000 No. 441)

*These Regulations have been amended by the Community Legal Service (Costs) (Amendment) Regulations 2001 (S.I. 2001 No.822) with effect from 2 April 2001. Amendments are shown in bold.*

Legal Services Commission, England and Wales

*Made* 18<sup>th</sup> March 2000

*Laid before Parliament* 25<sup>th</sup> February 2000

*Coming into force* 1<sup>st</sup> April 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 10, 11(2), (3) and (4)(a), (c) and (e) to (g) and section 22(1), (5) and (6) of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations:

### Part I General

#### General

##### 1. Citation and commencement

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

##### 2. Interpretation

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

“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 CPR;

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

“costs order against the Commission” means an order, made under regulation 5 of the Community Legal Service (Cost Protection) Regulations 2000 (but not one under regulation 6 of those Regulations), that the Commission pay all or part of the costs of 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not received funded services in relation to those proceedings under a certificate, other than a certificate which has been revoked;

“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;

“CPR” means the Civil Procedure Rules 1998, and a reference to a Part or rule, prefixed by “CPR”, means the Part or rule so numbered in the CPR;

“Financial Regulations” means the Community Legal Service (Financial) Regulations 2000;

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

“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 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;

“partner”, in relation to a party to proceedings, means a person with whom that party lives as a couple, and includes a person with whom the party 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;

“Regional Director” means any Regional Director appointed by the Commission in accordance with the Funding Code and any other person authorised to act on his behalf, except a supplier;

“rules of court”, in relation to a tribunal, means rules or regulations made by the authority having power to make rules or regulations regulating the practice and procedure of that tribunal and, in relation to any court, includes practice directions;

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

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

“statement of resources” means:

- (a) a statement, verified by a statement of truth, made by a party to proceedings setting out:
  - (i) his income and capital and financial commitments during the previous year and, if applicable, those of his partner;
  - (ii) his estimated future financial resources and expectations and, if applicable, those of his partner; and
  - (iii) a declaration that he and, if applicable, his partner, has not deliberately foregone or deprived himself of any resources or expectations, particulars of any application for funding made by him in connection with the proceedings, and any other facts relevant to the determination of his resources; or
- (b) a statement, verified by a statement of truth, made by a client receiving funded services, setting out the information provided by the client under regulation 6 of the Financial Regulations, and stating that there has been no significant change in the client's financial circumstances since the date on which the information was provided or, as the case may be, details of any such change,

“statement of truth” has the same meaning as in CPR Part 22;

“supplier” means any person or body providing funded services to the client, including any authorised advocate (within the meaning of section 119(1) of the Courts and Legal Services Act 1990) engaged by the client's solicitor to act in proceedings.

### **3. Effect of these Regulations**

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.

### **4. Termination of retainer where funding is withdrawn**

- (1) The following paragraphs of this regulation apply where funding is withdrawn by revoking or discharging the client's certificate.
- (2) Subject to paragraphs (3) and (4), on the revocation or discharge of the client's certificate, the retainer of any supplier acting under that certificate shall terminate immediately.

- (3) Termination of retainers under paragraph (2) shall not take effect unless and until any procedures under the Funding Code for review of the decision to withdraw the client's funding are concluded, and confirm the decision to withdraw funding.
- (4) The solicitor's retainer shall not terminate until he has complied with any procedures under the Funding Code that require him to send or serve notices.

## **Part II Costs Orders Against Client and Against Commission**

### **Costs Orders Against Client and Against Commission**

#### **5. Application of regulations 6 to 13**

Regulations 6 to 13 apply only where cost protection applies.

#### **6. Security for costs**

Where in any proceedings a client is required to give security for costs, the amount of that security shall not exceed the amount (if any) which is a reasonable one having regard to all the circumstances, including the client's financial resources and his conduct in relation to the dispute to which the proceedings relate.

#### **7. Assessment of resources**

- (1) The first £100,000 of the value of the client's interest in the main or only dwelling in which he resides shall not be taken into account in having regard to the client's resources for the purposes of section 11(1) of the Act.
- (2) Where, but only to the extent that, the court considers that the circumstances are exceptional, having regard in particular to the quantity or value of the items concerned, the court may take into account the value of the client's clothes and household furniture, or the tools and implements of his trade, in having regard to the client's resources for the purposes of section 11(1) of the Act.
- (3) Subject to paragraph (4), in having regard to the resources of a party for the purposes of section 11(1) of the Act, the resources of his partner shall be treated as his resources.
- (4) The resources of a party's partner shall not be treated as that party's resources if the partner has a contrary interest in the dispute in respect of which the funded services are provided.
- (5) Where a party is acting in a representative, fiduciary or official capacity, the court shall not take the personal resources of the party into account for the purposes of section 11(1) of the Act, but shall have regard to the value of any property or estate, or the amount of any fund out of which he is entitled to be indemnified, and may also have regard to the resources of the persons, if any, including that party where appropriate, who are beneficially interested in that property, estate or fund.

**8. Statements of resources**

- (1) Any person who is a party to proceedings in which another party is a client may make a statement of resources, and file it with the court.
- (2) A person making and filing a statement of resources under paragraph (1) shall serve a copy of it on the client.
- (3) Where a copy of a statement of resources has been served under paragraph (2) not less than seven days before the date fixed for a hearing at which the amount to be paid under a section 11(1) costs order falls, or may fall, to be decided, the client shall also make a statement of resources, and shall produce it at that hearing.

**9. Procedures for ordering costs against client and Commission**

- (1) Where the court **is considering whether to make** a section 11(1) costs order, it shall consider whether, but for cost protection, it would have made a costs order against the client and, if so, whether it would, on making the costs order, have specified the amount to be paid under that order.
- (2) If the court considers that it would have made a costs order against the client, but that it would not have specified the amount to be paid under it, the court shall, when making the section 11(1) costs order:
  - (a) specify the amount (if any) that the client is to pay under that order if, but only if:
    - (i) it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the client to pay, in accordance with section 11(1) of the Act; and
    - (ii) it is satisfied that, if it were to determine the full costs at that time, they would exceed the amount referred to in subparagraph (i);
  - (b) otherwise, it shall not specify the amount the client is to pay under the<sup>1</sup> costs order.
- (3) If the court considers that it would have made a costs order against the client, and that it would have specified the amount to be paid under it, the court shall, when making the section 11(1) costs order:
  - (a) specify the amount (if any) that the client is to pay under that order if, but only if, it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the client to pay, in accordance with section 11(1) of the Act;

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<sup>1</sup> The words “section 11(1)” appeared here in the original regulations but were deleted with effect from 2 April 2001.

- (b) otherwise, it shall not specify the amount the client is to pay under the<sup>2</sup> costs order.
- (4) Any order made under paragraph (3) shall state the amount of the full costs.
- (5) The amount (if any) to be paid by the client under an order made under paragraph (2)(b) or paragraph (3)(b), and any application for a costs order against the Commission, shall be determined in accordance with regulation 10, and at any such determination following an order made under paragraph (2)(b), the amount of the full costs shall also be assessed.
- (6) Where the court makes a section 11(1) costs order that does not specify the amount which the client is to pay under it, it may also make findings of fact, as to the parties' conduct in the proceedings or otherwise, relevant to the determination of that amount, and those findings shall be taken into consideration in that determination.

**10.**

- (1) The following paragraphs of this regulation apply where the amount to be paid under a section 11(1) costs order, or an application for a costs order against the Commission, is to be determined under this regulation, by virtue of regulation 9(5).
- (2) The receiving party may, within three months after a section 11(1) costs order is made, request a hearing to determine the costs payable to him.
- (3) A request under paragraph (2) shall be accompanied by:
  - (a) if the section 11(1) costs order does not state the full costs, the receiving party's bill of costs, which shall comply with any requirements of relevant rules of court relating to the form and content of a bill of costs where the court is assessing a party's costs;
  - (b) a statement of resources; and
  - (c) if the receiving party is seeking, or, subject to the determination of the amount to be paid under the section 11(1) costs order, may seek, a costs order against the Commission, written notice to that effect.
- (4) The receiving party shall file the documents referred to in paragraph (3) with the court and at the same time serve copies of them:
  - (a) on the client, if a determination of costs payable under section 11(1) of the Act is sought; and

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<sup>2</sup> The words "section 11(1)" appeared here in the original regulations but were deleted with effect from 2 April 2001.

- (b) on the Regional Director, if notice has been given under paragraph (3)(c).
- (5) Where documents are served on the client under paragraph (4)(a), the client shall make a statement of resources.
- (6) The client shall file the statement of resources made under paragraph (5) with the court, and serve copies of it on the receiving party and, if notice has been given under paragraph (3)(c), on the Regional Director, not more than 21 days after the client receives a copy of the receiving party's statement of resources.
- (7) The client may, at the same time as filing and serving a statement of resources under paragraph (6), file, and serve on the same persons, a statement setting out any points of dispute in relation to the bill of costs referred to in paragraph (3)(a).
- (8) If the client, without good reason, fails to file a statement of resources in accordance with paragraph (6), the court shall determine the amount which the client shall be required to pay under the section 11(1) costs order (and, if relevant, the full costs), having regard to the statement made by the receiving party, and the court need not hold an oral hearing for such determination.
- (9) If the client files a statement of resources in accordance with paragraph (6), or the period for filing such notice expires, or if the costs payable by the client have already been determined, the court shall set a date for the hearing and, at least 14 days before that date, serve notice of it on:
  - (a) the receiving party;
  - (b) the client (unless the costs payable by the client have already been determined); and
  - (c) if a costs order against the Commission is or may be sought, the Regional Director.
- (10) The court's functions under this regulation may be exercised:
  - (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, 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.

- (11) The amount of costs to be determined under this regulation may include the costs incurred in relation to a request made under this regulation.

**10A.**

- (1) Subject to paragraph (2), where the court makes a section 11(1) costs order but does not specify the amount which the client is to pay under it, the court may order the client to pay an amount on account of the costs which are the subject of the order.**
- (2) The court may order a client to make a payment on account of costs under this regulation only if it has sufficient information before it to decide the minimum amount which the client is likely to be ordered to pay on a determination under regulation 10.**
- (3) The amount of the payment on account of costs shall not exceed the minimum amount which the court decides that the client is likely to be ordered to pay on such a determination.**
- (4) Where the court orders a client to make a payment on account of costs-**
  - (a) it shall order the client to make the payment into court; and**
  - (b) the payment shall remain in court unless and until the court:**
    - (i) makes a determination under regulation 10 of the amount which the client should pay to the receiving party under the section 11(1) costs order, and orders the payment on account or part of it to be paid to the receiving party in satisfaction or part satisfaction of the client's liability under that order; or**
    - (ii) makes an order under paragraph (5)(b) or (5)(c) of this regulation that the payment on account or part of it be repaid to the client.**
- (5) Where a client has made a payment on account of costs pursuant to an order under paragraph (1) of this regulation-**
  - (a) the receiving party shall request a hearing under regulation 10 to determine the amount of costs payable to him;**
  - (b) if the receiving party fails to request such a hearing within the time permitted by regulation 10(2), the payment on account shall be repaid to the client;**
  - (c) if upon the hearing under regulation 10 the amount of costs which it is determined that the client should pay is less than the amount of the payment on account, the difference shall be repaid to the client. Inserted by the Community Legal Service (Costs) (Amendment) Regulations 2001, with effect from 2 April 2001.**

**11. Appeals, etc**

- (1) Subject to the following paragraphs of this regulation, and to regulation 12, any determination made under regulation 9 or regulation 10 shall be final.
- (2) Any party with a financial interest in an assessment of the full costs may appeal against that assessment, if and to the extent that that party would, but for these Regulations, be entitled to appeal against an assessment of costs by the court in which the relevant proceedings are taking place.
- (3) Where, under regulation 9(2)(a), the court has specified the amount which a client is required to pay under a section 11(1) costs order, the client may apply to the court for a determination of the full costs and if, on that determination, the amount of the full costs is less than the amount which the court previously specified under regulation 9(2)(a), the client shall instead be required to pay the amount of the full costs.
- (4) The receiving party or the Commission may appeal, on a point of law, against the making of a costs order against the Commission (including the amount of costs which the Commission is required to pay under the order), or against the court's refusal to make such an order.

## 12. Variation and late determination of amount of costs

- (1) The following paragraphs of this regulation apply where the court makes a section 11(1) costs order.
- (2) Where the amount (if any) which the client is required to pay under the section 11(1) costs order, together with the amount which the Commission is required to pay under any costs order against the Commission, is less than the full costs, the receiving party may, on the ground set out in paragraph (4)(a), apply to the court for an order varying the amount which the client is required to pay under the section 11(1) costs order.
- (3) Where the court has not specified the amount to be paid under the section 11(1) costs order, and the receiving party has not, within the time limit in regulation 10(2), applied to have that amount determined in accordance with regulation 10, the receiving party may, on any of the grounds set out in paragraph (4), apply for a determination of the amount that the client is required to pay.
- (4) The grounds referred to in paragraphs (2) and (3) are the grounds that:
  - (a) there has been a significant change in the client's circumstances since the date of the order;
  - (b) material additional information as to the client's financial resources is available, and that information could not with reasonable diligence have been obtained by the receiving party in time to make an application in accordance with regulation 10; or
  - (c) there were other good reasons justifying the receiving party's failure to make an application within the time limit in regulation 10(2).
- (5) Any application under paragraph (2) or (3) shall be made by the receiving party within six years from the date on which the section 11(1) costs order is first made.
- (6) On any application under paragraph (2), the order may be varied as the court thinks fit, but the amount of costs ordered (excluding any costs ordered to be paid under paragraph (9)) shall not exceed the amount of the full costs as stated in any previous order of the court.
- (7) When the amount which the client is required to pay under the section 11(1) costs order has been determined under regulation 9(2)(a), and the receiving party applies under paragraph (2) for an order varying that amount:
  - (a) the receiving party shall file with the application under paragraph (2) his bill of costs, which shall comply with any requirements of relevant rules of court relating to the form and content of a bill of costs where the court is assessing a party's costs; and

- (b) the court shall, when determining the application, assess the full costs.
- (8) Where the receiving party has received funded services in relation to the proceedings, the Commission may make an application under paragraph (2) or paragraph (3), and:
  - (a) when making the application the Commission shall file with the court a statement of the receiving party's costs or, if those costs have not been assessed, the receiving party's bill of costs; and
  - (b) paragraphs (4) to (6) shall apply to that application as if “the Commission” were substituted for “the receiving party” in those paragraphs.
- (9) The amount of costs to be determined under this regulation may include the costs incurred in relation to an application made under this regulation.

**13. Rights to appear**

- (1) The Regional Director may appear at:
  - (a) any hearing in relation to which notice has been given under regulation 10(3)(c);
  - (b) the hearing of any appeal under regulation 11(4); or
  - (c) the hearing of any application under regulation 12(8).
- (2) The Regional Director may, instead of appearing under paragraph (1), give evidence in the form of a written statement to the court, verified by a statement of truth.
- (3) The Regional Director shall file with the court any statement under paragraph (2), and serve a copy on the receiving party, not less than seven days before the hearing to which it relates.

## **Part III Property and Costs Recovered for a Funded Client**

### **Property and Costs Recovered for a Funded Client**

#### **14. Application of this Part**

(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; 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.

#### **15. Amount of costs under client's costs order or client's costs agreement**

- (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.

**16. Costs of serving notices and other documents**

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.

**17. Application of regulations 18 to 24**

- (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.

**18. Money recovered to be paid to solicitor**

- (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.

**19. Notice to third parties**

- (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.

**20. Solicitor to pay money recovered to Commission**

- (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.

## 21. Postponement of statutory charge

- (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;
- (b) the Inheritance (Provision for Family and Dependants) Act 1975;
- (c) the Adoption Act 1976;
- (d) the Domestic Proceedings and Magistrates' Courts Act 1978;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984;
- (f) Parts I, II and IV of the Children Act 1989;
- (g) Part IV of the Family Law Act 1996; 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.
- (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.

## **22. Retention and payment out of money by the Commission**

- (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.

**23. Enforcement of orders etc in favour of client**

- (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.

**24. Interest on damages**

- (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;

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

“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;

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

Irvine of Lairg, C.

Dated 18th February 2000

### EXPLANATORY NOTE

#### (This note is not part of the Regulations)

These Regulations deal with aspects of the Community Legal Service established by Part I of the Access to Justice Act 1999 (“the Act”) relating to costs, and, in particular:

- (a) the giving of security for costs (*regulation 6*);
- (b) the amount of a funded client's resources for the purposes of section 11(1) of the Act (*regulation 7*);
- (c) the procedure for quantifying a costs order against a funded client and for the making of a costs order against the Legal Services Commission (*regulations 8 to 13*);
- (d) the determination of costs under an order for costs in favour of a funded client (*regulations 15 and 16*);
- (e) the receipt and application of property and costs recovered on behalf of a funded client (*regulations 18 to 24*).

These Regulations also make provision for the termination of the retainer of a supplier of funded services, upon the withdrawal of funding (*regulation 4*).