

The Statutory Charge

Where someone gains or keeps money or property with the help of legal aid in a civil case, they may have to repay all or some of their legal costs out of that money or property - if costs are not recovered from their opponent. In this situation, legal aid can act as a loan. This is called the statutory charge. If a property which is going to be used as a home is recovered with the benefit of legal aid, instead of asking clients to pay back the costs of their case straight away, enforcement of the charge can be postponed (provided the LSC is able to register a charge against their property) - thereby postponing repayment until the property is sold.

Solicitors have a duty to explain the operation of the statutory charge before their clients apply for legal aid. Clients should also be given an opportunity to comment on the amount of their solicitors costs before they are assessed. At the end of September 2006 there were just over 60,000 such charges on homes in England and Wales.

The charge has three main objectives:

1. It allows public money to be 'recycled' so that it can be used to fund other people's legal cases in the future.
2. It helps to deter people from running up unnecessary legal costs.
3. It puts the person whose case is being funded by legal aid in the same position as a person who is paying their solicitor privately.

Before 1 December 1988, all statutory charges registered on properties did not accrue interest. Simple interest (i.e. the same amount is added to the debt each day) has accrued on statutory charges registered on properties since 1 December 1988. The rate of simple interest accrued has been set at varying levels. The current rate, which has applied since 1 October 2005, is 8%. The majority of statutory charges are interest bearing. The individual circumstances of a case will determine if the charge is interest bearing or non-interest bearing.

Previously, the Legal Aid Board (the LSC's predecessor) relied on solicitors to inform their clients, and the fact that registration of a land charge at the Land Registry was notice to all that there was a statutory charge in place. Now, the LSC has a policy of sending regular statutory charge statements to clients, reminding them that a charge is still registered on their properties.

A project team was established in 2000 (when the LSC came into existence) to confirm the amounts owing on each of the outstanding charges and write to all the homeowners concerned.