Statutory Background and Proposals for Contingency Fees

Introduction

I have not in this paper referred specifically to authorities. I can add them if that is desired. Also, I have quoted freely from judicial comment and Lord Justice Jackson's preliminary and final reports without specific ascription. Again, I can add that if that is desired.

It is not the purpose of this paper to provide draft legislation. The purpose is to explain the statutory background and make some recommendations as to the way in which contingency fee agreements may be regulated, in accordance with the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO).

I refer to contingency fee agreements as damages-based agreements or DBA's for ease of reference and to differentiate them from conditional fee agreements (CFA's).

Summary

The structure of the legislation for both CFA's and DBA's is to exclude the application of the doctrines of maintenance and champerty to statute abiding agreements. Initially when the conditional fee success element was made recoverable in 2000, the legislation was supplemented by the Conditional Fee Agreements Order and the Conditional Fee Agreements Regulations 2000 with which a receiving party had to comply in order to be entitled to their costs under a CFA. These regulations were long and detailed and led to the so-called costs war, the tail of which is still being felt today.

DBA's are lawful in employment matters being matters before the Employment Tribunal. They are regulated by the existing Section 58AA and by the Damages-Based Agreements Regulations 2010 (DBA Regulations). Those Regulations set out the requirements that are obligatory for the contents of the agreement and the information that must be given before entering into it.

The general tenet of this paper is that we should learn from the costs war and should apply a light touch to the regulation of the contents and information given with a DBA. This is the regime which now applies to CFA's. A similar approach to DBA's would place DBA's on an equal footing with CFA's.

Although initially considering that the DBA Regulations 2010 might be amended appropriately, this paper suggests that consideration should be given to a separate regulation dealing simply with the limit on the share of damages that may be paid for costs applying to both CFA's and DBA's. This paper concludes that it would not be appropriate to adopt the regime provided for in the DBA Regulations for all DBA's.

The position is not entirely simple in that there are requirements for regulation in establishing the limit on the share of the damages that costs will not exceed. In employment this is provided for within the DBA Regulations at 35%. There is a proposal that there will be a limit of 25% of damages in personal injury cases. This would apply (following the provisions of Section 44(2) of LASPO) to both CFA's and DBA's.

Champerty

It is of some importance to understand the continuation of the common law doctrines of maintenance and champerty. Maintenance is the support of litigation in which a person has no legitimate concern without just cause or excuse. Champerty occurs when the person maintaining another does so in return for a share of the proceeds of the action or suit.

The concepts are broad and undefined. The policy background, however, is that officers of the court, solicitors, should not place themselves in a position where their own interests may conflict with their duties to the court. The rules are primarily concerned with the protection of the integrity of the litigation process. Lord Justice Jackson recommended that the doctrine should not be abolished wholesale. He recognised that as doctrines determined by public policy, the doctrines would develop and indeed have developed in accordance with the court's changing interpretation of that policy. This development can be seen in landmark decisions over the past ten years in which effectively third party funding of litigation was made lawful.

The survival of the doctrines is important because the statutory basis for conditional fees and contingency fees is to exclude the doctrines in their application to relevant agreements.

The continuation of the doctrines is, however, of remaining interest, particularly in relation to third party funders. Through a range of authorities, third party funders do not fall foul of the doctrines as long as they do not direct the litigation process. This is contrary to the position in Australia where third party funders are able to control litigation, notwithstanding the continuation of the doctrines in that jurisdiction. The Australians take the attitude that he who pays the piper calls the tune. We take a very different attitude. Indeed, Lord Justice Jackson noted that in the event of the removal of the doctrines, third party funders would become much more involved in directing the litigation process, which he regarded as unacceptable.

Some statutory history

As above the founding legislation for CFA's is Section 58 of the Courts and Legal Services Act 1990. Section 58 was not activated until 1995 by the Conditional Fee Agreements Order of that year. Even then, CFA's could only be used in specific proceedings, personal injury, insolvency and ECHR. The 1995 Order also limited the amount of the success fee that could be payable to 100%. It is worth adding that in 1995 the Law Society recommended that there should be a voluntary cap on the total deduction for costs limited to no more than 25% of the damages recovered. This cap seemed initially to have effect but in due course that fell by the wayside.

Coincidental with the Woolf reforms, Section 27 of the Access to Justice Act 1999 amended Section 58. Government policy was developing in the late 1990's on the size of the Legal Aid budget. The policy decision was made that there would be cuts in the scope of Legal Aid but, in order to ensure that there was continuing access to justice for those less able to afford legal services, CFA's would be extended to all types of proceedings, the success fee included in the CFA and the premium for after the event insurance would become recoverable. All this was put into place by the Access to Justice Act 1999 which introduced the recoverability of the success fee by amendment to Section 58 and the insertion of 58A of the Courts and Legal Services Act. In addition, Section 29 of the Access to Justice Act also provided for the recovery of insurance premiums for after-the-event insurance.

Alongside these changes, two statutory instruments were introduced, the Conditional Fee Agreements Order 2000 and the Conditional Fee Agreements Regulations 2000. There are also two further instruments dealing with membership organisations and collective CFA's.

The two main statutory instruments were the source subsequently of the so-called "costs war" because the paying party, often an insurer, challenged the enforceability of the CFA, particularly when it did not comply precisely with the provisions of the two statutory instruments.

The costs war led to the CFA (Miscellaneous Amendment) Regulation 2003 which was intended to provide for a simplified CFA reducing the likelihood of technical challenges. There was a second amendment the same year in the CFA (Miscellaneous Amendments No 2) Regulations which made further amendments to the simplified CFA regime.

The costs war went on and it was decided in due course to revoke altogether the CFA Regulations. This was done by the CFA Revocation Regulations 2005. That had effect from 1 November 2005. It only had effect thenceforth and thus challenges to pre-2005 agreements continued for some years afterward.

Sections 58 and 58A Courts and Legal Services Act 1990

Both CFA's and DBA's contravene the common law doctrines of maintenance and champerty because:

- They may appear to put the solicitor and advocate in conflict between the interests of the client and their responsibilities to the court.

- Further, they allow the solicitor/advocate an interest in the outcome of the litigation process.

Absent the legislation it may be said that with a modern interpretation of the doctrines, CFA's and a DBA's, in any form, could be considered lawful. That, however, is not how the legislation is structured. The legislation specifically makes them unenforceable if they do not comply with the set requirements. In the past that structure and its purpose has led to considerable satellite litigation in relation to CFA's.

Section 58 of the Courts and Legal Services Act 1990, as amended by the Access to Justice Act 1999, broadly regulates CFA's. The principles have been replicated for DBA's in Section 58AA.

Section 58(1) provides that a CFA that satisfies all the conditions applicable to it in accordance with the section is not unenforceable by reason only of its being a CFA, but outlaws any other CFA. Accordingly, a CFA which meets the requirements is excluded from the doctrines of maintenance and champerty. The corollary, however, is that if the agreement does not meet the requirements then it is unenforceable despite what may be changing public policy to such agreements.

Section 58(2) defines a CFA.

Section 58(3) sets out the conditions that are applicable to every CFA. These are of some importance because of the fresh statutory regime for DBA's. Under Section 58(3), a CFA must be in writing. It cannot relate to proceedings which cannot be the subject of an enforceable CFA (for that see Section 58A) and it must comply with the requirements prescribed by the Chancellor. These conditions apply to all CFA's.

There are additional requirements where the CFA provides for a success fee. These are provided in Section 58(4) and state that the agreement must relate to proceedings of a description specified by order made by the Lord Chancellor; it must state the percentage by which the amount of fees which would be payable if it were not a CFA is to be increased (i.e. the uplift). That percentage must not exceed the percentage specified by the Lord Chancellor. The Conditional Fee Agreements Order 2000 provides that the percentage increase cannot exceed 100%.

Section 58A provides some supplementary provisions in relation to CFA's including setting out what proceedings cannot be the subject of an enforceable CFA. The section also details some of the requirements that the Lord Chancellor may prescribe under Section 58(3). The Conditional Fees Regulations 2000 were made under Section 58 with the prerequisites for an enforceable CFA. These were repealed in 2005, leaving the provisions of Sections 58 and 58A to stand alone.

In addition to the statutory regime solicitors were bound by the ever developing Solicitors' Code of Conduct. The Code of Conduct 2011 (see below) replaced the Solicitors Code of Conduct 2007.

The Conditional Fees Regulations 2000 undoubtedly led to the costs war in early 2000's. The costs war, despite the repeal in 2005, has had a long tail and disputes still arise in relation to compliance with those regulations. This change in attitude towards the regulations is of some importance for future statutory provision. The regulations allowed the paying party to police the relationship between

solicitor and the receiving client. What had not been foreseen was that that policing would be undertaken on a 'no tolerance' basis. The lessons learnt from the costs war have led to the conclusion generally that detailed statutory prescription of the terms of agreements between solicitors and client in this context gives rise to substantial satellite litigation.

Section 58AA Damages-Based Agreements

Section 58AA of the Courts and Legal Services Act 1990 was added by the Coroners and Justice Act 2009. Section 58AA is very much based upon the provisions of Sections 58 which effectively establish the theme of the regulation of "contingency" / conditional fees. Section 58AA currently only applies to employment matters in its substantive form. As detailed below, LASPO has amended it into a version that covers all claims.

Section 58AA follows very much the model established by Section 58. Employment matters as defined by the Section bear, however, two significant differences from court proceedings. First maintenance and champerty has no application to work undertaken in the Employment Tribunals. Matters coming before the Employment Tribunal are, for these purposes, outside the litigation process – they are akin to, if not, in fact, non-contentious business for those purposes. Second there is limited cost shifting in Employment Tribunals. The loser, in the vast majority of cases, does not pay. The extension of DBA's to all other types of proceedings introduces the principle of loser pays and all that arises from it.

Section 58AA provided a statutory framework to an existing arrangement, previously unregulated by statute, by which solicitors could enter into contingency arrangements with their clients for matters in front of the Employment Tribunal as well as for certain other non contentious work, such as Criminal Injuries Compensation.

Notwithstanding the fact that work in front of the Employment Tribunal could be done without breaching the doctrines of champerty and maintenance, Section 58AA(1) provides that a DBA which relates to an employment matter is not unenforceable. Very much like Section 58A, however, if a DBA relating to an employment matter does not satisfy the preconditions set out in the section, it is unenforceable. Those conditions also reflect Section 58, so the agreement must be in writing; it must not provide for payments above a prescribed amount or for a payment above an amount calculated in a prescribed manner (see below); it must comply with other requirements as are prescribed; and it must be made only after providing prescribed information to the client.

Section 58AA(3) defines a DBA. The provisions differ from Section 58 by applying the definition to an agreement for advocacy or litigation services and claims management services.

The DBA is an agreement between one person and another by which the payment for services arises if the recipient of the services obtains a specified financial benefit in connection with the matter in relation to which the services are provided and the amount of payment is determined by reference to the amount of the financial benefit obtained.

One might see that that definition may be questioned but there is no purpose in us debating that issue because of the current state of the legislation.

Employment matters are defined by Section 58AA(3)(b) broadly as proceedings in front of the Employment Tribunal. It is to be noted, for instance, that it does not apply to employment matters for any other forum such as the normal courts.

As outlined above CFA's provided for under Sections 58 and 58A are not supported by any prescriptive regulations. The position is different under Section 58AA. The Section is supported by regulations and in particular the Damages-Based Agreements Regulations 2010. These provide that a DBA in relation to an employment matter is not enforceable unless it complies with the requirements of the Regulations, as provided for in Section 58AA(2). There has been no consequent 'cost war' in employment matters because there is no cost shifting. I am not clear on the policy issues but it may have been considered that regulation in employment matters was required because there is no cost shifting and the paying party is not policing the relationship between a solicitors and his client as it did under the CFA Regulations.

Regulation 3 of the Regulations provides that a DBA must specify –

(a) the claim or proceedings or parts of them to which it relates;

(b) the circumstances in which the representative's payment, expenses and costs, or part of them, are payable; and

(c) the reason for setting the amount of the payment at the level agreed, including having regard to, where appropriate, whether the claim or proceedings is one of several similar claims.

Regulation 3 partly reflects the former Conditional Fee Regulations 2000 in providing for some elements of the contents of an agreement.

The position is similar under Regulation 4 which sets out the information to be given before an agreement is made. I do not set that out in full but it can be seen in Appendix 4. The information has to be given in writing.

One can see that there are some trip points for solicitors. The Regulations are clear that the requirements are obligatory so there appears to be no discretion for the court in the event of a failure to comply with these requirements. There is no opening for a quantum merruit assessment of cost. One can see the difficulty that may arise and there must be some question as to whether the requirements of the Regulations should apply to all DBA's. It seems to me that there is likely to be at least some form of costs war in relation to fulfilling the requirements of these Regulations if they are to be applied to all DBA's.

Regulation 5 states that the agreement must be in writing and signed by the client and the representative. Note that there is no such requirement for a CFA.

Regulation 6 provides that the payment for services including VAT must not exceed 35% of the sum recovered by the client in the claim or proceedings. This suggests that it is a cash recovery which is all important. Further, the payment does not include expenses in accordance with Section 58AA but may include counsel's fees unless they are provided separately and the client is informed of that fact.

Regulation 7 provides for what happens if the agreement is terminated. In CFA's, the circumstances in which an agreement may be terminated and what follows is the matter of long contractual provisions often forming the bulk of the agreement itself. There is no statutory regulation of what may happen if a CFA is terminated. Regulation 7 provides that if a DBA is terminated, the representative may charge the client no more than their costs and expenses for the work undertaken in respect of the client's claim or proceedings. That is different from a standard CFA which usually provides different consequences depending on who terminates and for what reason. For instance, in certain circumstances a solicitor may have the election to choose whether to accept at the point of termination their costs and expenses for the work to that date, or hang on in there until the end of the proceedings and take the CFA success fee.

Regulation 7 also provides that the client may not terminate the agreement after liability has been admitted, settlement has been agreed, or within seven days before the start of a tribunal hearing. It might be seen that the corollary to that is that they can terminate in other circumstances. This, however, is likely to be the subject of the agreement itself.

Finally, Regulation 7 provides that the representative may not terminate the agreement and charge costs unless the client has behaved or is behaving unreasonably. Again this is very different from the standard CFA.

The LASPO Changes

The introduction of DBA's to claims beyond employment matters is effected by Section 45 of LASPO. It amends Section 58AA of the Courts and Legal Services Act 1990. I set out below the amended version of Section 58AA:-

(1) A damages-based agreement which ~~relates to an employment matter and~~ satisfies the conditions in subsection (4) is not unenforceable by reason only of its being a damages-based agreement.

(2) But (subject to subsection (9)) a damages-based agreement which ~~relates to an employment matter and~~ does not satisfy those conditions is unenforceable.

(3) For the purposes of this section—

(a) a damages-based agreement is an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that—

(i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and

(ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained;

~~(b) a damages-based agreement relates to an employment matter if the matter in relation to which the services are provided is a matter that is, or could become, the subject of proceedings before an employment tribunal.~~

(4) The agreement—

(a) must be in writing;

(aa) must not relate to proceedings which by virtue of section 58A(1) and (2) cannot be the subject of an enforceable conditional fee agreement or to proceedings of a description prescribed by the Lord Chancellor;

(b) if regulations so provide, must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner;

(c) must comply with such other requirements as to its terms and conditions as are prescribed; and

(d) must be made only after the person providing services under the agreement ~~has provided prescribed information~~ has complied with such requirements (if any) as may be prescribed as to the provision of information.

(5) Regulations under subsection (4) are to be made by the Lord Chancellor and may make different provision in relation to different descriptions of agreements.

(6) Before making regulations under subsection (4) the Lord Chancellor must consult—

(a) the designated judges,

(b) the General Council of the Bar,

(c) the Law Society, and

(d) such other bodies as the Lord Chancellor considers appropriate.

(6A) Rules of court may make provision with respect to the assessment of costs in proceedings where a party in whose favour a costs order is made has entered into a damages-based agreement in connection with the proceedings.

(7) In this section—

- "payment" includes a transfer of assets and any other transfer of money's worth (and the reference in subsection (4)(b) to a payment above a prescribed amount, or above an amount calculated in a prescribed manner, is to be construed accordingly);

- "claims management services" has the same meaning as in Part 2 of the Compensation Act 2006 (see section 4(2) of that Act).

(7A) In this section (and in the definitions of "advocacy services" and "litigation services" as they apply for the purposes of this section) "proceedings" includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.

(8) Nothing in this section applies to an agreement entered into before the coming into force of the first regulations made under subsection (4).

(9) Where section 57 of the Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies to a damages-based agreement other than one relating to an employment matter, subsections (1) and (2) of this section do not make it unenforceable.

(10) For the purposes of subjection (9) a damages-based agreement relates to an employment matter if the matter in relation to which the services are provided is a matter that is, or could become, the subject of proceedings before an employment tribunal.

In addition to the alteration of Section 58AA, LASPO at Section 44 also amends Section 58 and Section 58A of the Act. The major change is the removal of the recovery of the success fee payable under a CFA. In addition, however, Section 44(2)(4B) provides for additional statutory conditions for an enforceable CFA. Those conditions are:-

- The agreement must provide that the success fee is subject to a maximum limit;

- The maximum limit must be expressed as a percentage of the descriptions of damages awarded in the proceedings that are specified in the agreement;

- That percentage must not exceed the percentage specified by order made by the Lord Chancellor in relation to the proceedings or calculated in a manner so specified; and

- Those descriptions of damages may only include descriptions of damages specified by an order made by the Lord Chancellor in to the proceedings.

As will be seen, these additional conditions concentrate on the limits placed on the success fee, both as an absolute and as a percentage of damages.

The Civil Procedure Rules

In order to complete the statutory regulation of CFA's (and undoubtedly DBA's), mention should be made of the Civil Procedure Rules. These also provide control over the quantification of costs subject to CFA's and in due course DBA's. They took a central part in the "costs war" in the quantification of costs as between the receiving party and paying party.

Code of Conduct

A review of the regulatory system that applies to CFA's and DBA's should include reference to the professional obligations of solicitors under the Code of Conduct. In doing so, however, it should be remembered that the regulation of DBA's under Section 58AA and the Regulations is directed not only to those providing litigation and advocacy services but also to claims management companies. They are of course not subject to the Code of Conduct. The previous Solicitors Code of Conduct was

prescriptive in its regulation of acceptable conduct. This concept of prescription was changed in the new Code of Conduct which came into effect last year. The new Code reflects a changing approach to the process of regulation moving towards "outcome focused" regulation. The underlying idea is that the Code is not prescriptive but concentrates on broader principles to ensure an outcome to the client that is seen as appropriate.

I do not here go into the detail of the new Code of Conduct but the Code effectively requires that solicitors should, for instance, provide relevant and sufficient information in relation to agreements for the litigation process and, for instance, provide costs estimates and budgets. Although the underlying concepts behind the new Code differ from the old, the ultimate requirements of solicitors remain much the same being previously contained in paragraph 2.03 of the Solicitors Code of Conduct 2007. Although compliance with the Code of Conduct is obligatory, a failure to comply with the Code does not make the agreement unenforceable but the law is in a process of transition on that question.

At the time of the revocation of the Conditional Fee Regulations in 2005, the regulatory picture contained the requirements of Sections 58 and 58A, the Civil Procedure Rules and then Solicitors Code of Conduct. As far as CFA's are concerned, that remains the position save that, as above, Section 44 of LASPO has added to the statutory conditions for an enforceable CFA.

Proposals

There are three broad possibilities in the regulation of DBA's outside employment matters.

1. We could return to a prescriptive regime for information that should be given before entering into a DBA and the contents of the DBA. This arises as a possibility because there has been broad reference to the "Ontario model" of DBA's and its accompanying regime. That model includes a fairly detailed prescription of the DBA, both in relation to information to be given and the contents. We understand from other research that this has led in Ontario to its own "costs war" with much of the litigation concerning DBA's in Ontario concentrating in this area.

   One important difference with Ontario, however, is that if the agreement is found to be unenforceable, the court may assess the costs on a quantum meruit basis. The legislation in this jurisdiction does not allow for that because it is prescriptive to the extent that if the agreement does not comply with the statutory requirements it is unenforceable in any way.

We propose that in this respect the Ontario model should not be adopted and we should not return to providing a prescriptive and detailed list of requirements for both information given beforehand and the contents of the DBA.

2. The softer approach is to amend the DBA Regulations so that they have wider application to all forms of DBA's. This might be a relatively simple exercise of altering the Regulations in the same way that Section 58AA has been amended. This would mean that the Regulations would apply not just to DBA's relating to employment matters but to "any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated".

The effect of that would be that the prerequisite set out in Regulation 3 and Regulation 4 would need to be fulfilled for the DBA to be enforceable.

Regulation 3 probably does not cause any particular problem. It is light in its requirements of an agreement. Regulation 3 reflects to some extent the provisions of Regulation 3 of the Conditional Fee Regulations which were revoked. The adoption, therefore, of Regulation 3 would be somewhat harking back to the old former Regulations repealed in 2005.

Regulation 4 of the DBA Regulations 2010 sets out in a bit more detail what information has to be given before an agreement is made. As above, there are five particular requirements. Further, there is an obligation to provide further explanation as the client may request.

Clearly the concern with the adoption of these requirements is that it will lead back to a potential "costs war".

The argument in favour is that those Regulations provide protection for the consumer in regulating what should be in the agreement and what information should be provided in relation to it. Those Regulations, however, apply in circumstances where there is no cost shifting. The problems that arose under the Conditional Fee Agreement Regulations arose very much from the fact that the liability of the loser to pay costs led them to question all elements of the Regulations and compliance. This is likely to repeat itself in relation to DBA's if the Regulations are to be applied more widely. There is thus an argument that in fact the contents of the DBA's and the information that is to be provided to the client should not be extended beyond DBA's applying to employment matters.

The question that is posed currently is whether the Damages-Based Agreements Regulations 2010 should be amended to provide in a similar way as Section 58AA has been amended for their application not just to DBA's relating to employment matters but to "any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated".

Our view is that there is no desire to return to the costs wars that followed from the Conditional Fee Regulations 2000. This means rejecting in part the Ontario model to provide details of what should or should not be in the agreement and what information should be provided in relation to it for it to be enforceable. The current Damages-Based Regulations do set out some requirements. The question that is posed is whether or not these requirements should apply generally to all DBA's.

3. The final approach to the regulation of DBA's is to do nothing. Absent an amendment to the 2010 Regulations, the only statutory regulatory control of the DBA's would be the provisions of Section 58AA. That would indeed reflect the position for CFA's under Sections 58 and 58A. Indeed, if additional regulations were to be applied to DBA's, there would be a marked difference between such agreements and conditional agreements. This might affect the market and the way in which solicitors undertake their work and enter into agreements with their clients. It would be safer for the solicitor to enter into the CFA with potentially some limit on the fee that is charged.

One element of the Regulations that does need addressing for the future is if there is to be a cap on the recovery that a solicitor can make out of damages recovered. As above, Regulation 6 provides that the fee cannot exceed 35% of the sums recovered. It is proposed that there be a similar cap for some claims, mainly personal injury, but at the level of 25%. That is fine but will have to be the subject of further regulation. In my view Regulation 6 should be a little clearer as to what that limit applies to. That aside, the Ontario model provides that the limit should include costs recovered. Again, if that is to be the regulation, it needs to be made very clear.

Conclusion

There are two real choices for the regulation of DBA's. Either the softer approach is taken with an amendment to the DBA Regulations or there is no further regulation over and above what currently

exists (subject to the regulation of the upper limit for percentage of costs under the DBA). If the former approach is taken then it would probably be as well simply to keep the regulation of DBA's all within the one regulatory framework. This would mean amending the existing regulations to extend them to all agreements. If the latter position is taken, this would require either an amendment to the existing regulations or possibly some fresh regulations simply dealing with the aspect of the upper limit on the percentage of damages that can be taken for costs.

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PART II

LEGAL SERVICES

Miscellaneous

[F1 58 Conditional fee agreements.

(1) A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable.

(2) For the purposes of this section and section 58A—

(a) a conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances; and

(b) a conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances.

(3) The following conditions are applicable to every conditional fee agreement—

(a) it must be in writing;

(b) it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement; and

(c) it must comply with such requirements (if any) as may be prescribed by the [F2Lord Chancellor].

(4) The following further conditions are applicable to a conditional fee agreement which provides for a success fee—

(a) it must relate to proceedings of a description specified by order made by the [F2Lord Chancellor];

(b) it must state the percentage by which the amount of the fees which would be payable if it were not a conditional fee agreement is to be increased; and

(c) that percentage must not exceed the percentage specified in relation to the description of proceedings to which the agreement relates by order made by the [F2Lord Chancellor].

(5) If a conditional fee agreement is an agreement to which section 57 of the M1Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies, subsection (1) shall not make it unenforceable.]

Annotations:

Amendments (Textual)

F1 Ss. 58, 58A substituted (1.4.2000) for s. 58 by 1999 c. 22, **s. 27(1)** (with Sch. 14 para. 7(2)); S.I. 2000/774, **art. 2(b)** (with arts. 3-5)

F2 Words in s. 58 substituted (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), art. 8, **Sch. para. 2**

Modifications etc. (not altering text)

C1 S. 58: transfer of functions (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), **art. 3** (with arts. 4, 5)

C2 S. 58(3)(c) extended (27.9.1999) by 1999 c. 22, ss. 105, 108(3), **Sch. 14 Pt. III para. 11** (with Sch. 14 para. 7(2))

C3 S. 58(4) extended (27.9.1999) by 1999 c.22, ss. 105, 108(3), **Sch. 14 Pt. III para. 10** (with Sch. 14 para. 7(2))

Marginal Citations

M1 1974 c.47.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Courts and Legal Services Act 1990. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Commencement Orders yet to be applied to the Courts and Legal Services Act 1990:
Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2010/708 art. 1-14 commences (2008 c. 14)
- S.I. 2010/2089 art. 1-8 commences (2007 c. 29)
- S.I. 2010/2921 art. 2 3 commences (2003 c. 39)
- S.I. 2011/2196 art. 2 commences (2007 c. 29)

Courts and Legal Services Act 1990

1990 CHAPTER 41

PART II

LEGAL SERVICES

Miscellaneous

[F1]58A Conditional fee agreements: supplementary.

(1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are—

(a) criminal proceedings, a part from proceedings under section 82 of the [M1] Environmental Protection Act 1990; and

(b) family proceedings.

(2) In subsection (1) "family proceedings" means proceedings under any one or more of the following—

(a) the [M2]Matrimonial Causes Act 1973;

[[F2](b) the Adoption and Children Act 2002;]

(c) the [M3]Domestic Proceedings and Magistrates' Courts Act 1978;

(d) Part III of the [M4]Matrimonial and Family Proceedings Act 1984;

(e) Parts I, II and IV of the [M5]Children Act 1989;

(f) [[F3]Parts 4 and 4A]of the [M6]Family Law Act 1996; [F4]...

[[F5](fa) Chapter 2 of Part 2 of the Civil Partnership Act 2004 (proceedings for dissolution etc. of civil partnership);

(fb) Schedule 5 to the 2004 Act (financial relief in the High Court or a county court etc.);

(fc) Schedule 6 to the 2004 Act (financial relief in magistrates' courts etc.);

(fd) Schedule 7 to the 2004 Act (financial relief in England and Wales after overseas dissolution etc. of a civil partnership); and]

(g) the inherent jurisdiction of the High Court in relation to children.

(3) The requirements which the [F6Lord Chancellor] may prescribe under section 58(3)(c)—

(a) include requirements for the person providing advocacy or litigation services to have provided prescribed information before the agreement is made; and

(b) may be different for different descriptions of conditional fee agreements (and, in particular, may be different for those which provide for a success fee and those which do not).

(4) In section 58 and this section (and in the definitions of "advocacy services" and "litigation services" as they apply for their purposes) "proceedings" includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.

(5) Before making an order under section 58(4), the [F6Lord Chancellor] shall consult—

(a) the designated judges;

(b) the General Council of the Bar;

(c) the Law Society; and

(d) such other bodies as he considers appropriate.

(6) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any fees payable under a conditional fee agreement which provides for a success fee.

(7) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a conditional fee agreement (including one which provides for a success fee).

Annotations:

Amendments (Textual)

F1 Ss. 58, 58A substituted (1.4.2000) for s. 58 by 1999 c.22, **s. 27(1)** (with Sch. 14 para. 7(2)); S.I. 2000/774, **art. 2(b)** (with arts. 3-5)

F2 S. 58A(2)(b) substituted (30.12.2005) by 2002 c. 38, ss. 139, 148(1), Sch. 3 para. 80 (with savings in Sch. 4 paras. 6-8, 22); S.I. 2005/2213, **art. 2**

F3 Words in s. 58A(2)(f) substituted (25.11.2008) by Forced Marriage (Civil Protection) Act 2007 (c. 20), ss. 3(1), 4(2), **Sch. 2 para. 2**; S.I. 2008/2779, **art. 2(b)(c)**

F4 Word in s. 58A(2)(f) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1)(4), 263, Sch. 27 para. 138, **Sch. 30**; S.I. 2005/3175, **art. 2**, Sch. 1

F5 S. 58A(2)(fa)-(fd) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, Sch. 27 para. 138; S.I. 2005/3175, **art. 2**, Sch. 1

F6 Words in s. 58A substituted (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), art. 8, **Sch. para. 2**

Modifications etc. (not altering text)

C1 S. 58A: transfer of functions (12.1.2006) by The Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429), **art. 3** (with arts. 4, 5)

C2 S. 58A(6)(7) excluded (1.4.2000) by S.I. 2000/900, **art. 2(1)(a)(b)**

Marginal Citations

M1 1990 c.43.

M2 1973 c.18.

M3 1978 c.22.

M4 1984 c.42.
M5 1989 c.41.
M6 1996 c.27.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Courts and Legal Services Act 1990. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Commencement Orders yet to be applied to the Courts and Legal Services Act 1990:
Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2010/708 art. 1-14 commences (2008 c. 14)
- S.I. 2010/2089 art. 1-8 commences (2007 c. 29)
- S.I. 2010/2921 art. 2 3 commences (2003 c. 39)
- S.I. 2011/2196 art. 2 commences (2007 c. 29)

Courts and Legal Services Act 1990

1990 CHAPTER 41

PART II

LEGAL SERVICES

Miscellaneous

[F1 58AA Damages-based agreements relating to employment matters

(1) A damages-based agreement which relates to an employment matter and satisfies the conditions in subsection (4) is not unenforceable by reason only of its being a damages-based agreement.

(2) But a damages-based agreement which relates to an employment matter and does not satisfy those conditions is unenforceable.

(3) For the purposes of this section—

(a) a damages-based agreement is an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that—

(i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and

(ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained;

(b) a damages-based agreement relates to an employment matter if the matter in relation to which the services are provided is a matter that is, or could become, the subject of proceedings before an employment tribunal.

(4) The agreement—

(a) must be in writing;

(b) must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner;

(c) must comply with such other requirements as to its terms and conditions as are prescribed; and

(d) must be made only after the person providing services under the agreement has provided prescribed information.

(5) Regulations under subsection (4) are to be made by the Lord Chancellor and may make different provision in relation to different descriptions of agreements.

(6) Before making regulations under subsection (4) the Lord Chancellor must consult—

(a) the designated judges,

(b) the General Council of the Bar,

(c) the Law Society, and

(d) such other bodies as the Lord Chancellor considers appropriate.

(7) In this section—

"payment" includes a transfer of assets and any other transfer of money's worth (and the reference in subsection (4)(b) to a payment above a prescribed amount, or above an amount calculated in a prescribed manner, is to be construed accordingly);

"claims management services" has the same meaning as in Part 2 of the Compensation Act 2006 (see section 4(2) of that Act).

(8) Nothing in this section applies to an agreement entered into before the coming into force of the first regulations made under subsection (4).]

Annotations:

Amendments (Textual)

F1 S. 58AA inserted (12.11.2009) by Coroners and Justice Act 2009 (c. 25), **ss. 154(2)**, 182(1)(e) (with s. 180, Sch. 22)

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Courts and Legal Services Act 1990. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Commencement Orders yet to be applied to the Courts and Legal Services Act 1990:
Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2010/708 art. 1-14 commences (2008 c. 14)
- S.I. 2010/2089 art. 1-8 commences (2007 c. 29)
- S.I. 2010/2921 art. 2 3 commences (2003 c. 39)
- S.I. 2011/2196 art. 2 commences (2007 c. 29)

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 24th February 2010 and published on 1st March 2010. It is being issued free of charge to all known recipients of that draft Statutory Instrument.
Draft Regulations laid before Parliament under section 120(4) of the Courts and Legal Services Act 1990, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.000

LEGAL SERVICES, ENGLAND AND WALES

The Damages-Based Agreements Regulations 2010

Made - - - -	*000*
Coming into force - -	*6th April 2010*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 58AA(4) and 120(3) of the Courts and Legal Services Act 1990(**1**).

He has consulted the designated judges, the General Council of the Bar, the Law Society and such other bodies as he considered appropriate in accordance with section 58AA(6) of that Act.

A draft of this instrument has been laid before and approved by both Houses of Parliament in accordance with section 120(4) of that Act(**2**).

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Damages-Based Agreements Regulations 2010 and come into force on 6th April 2010.

(2) In these Regulations—

"the Act" means the Courts and Legal Services Act 1990;

"client" means the person who has instructed the representative to provide advocacy services, litigation services (within the meaning of section 119 of the Act) or claims management services (within the meaning of section 4(2)(b) of the Compensation Act 2006(**3**)) and is liable to make a payment for those services;

"costs" means the total of the representative's time reasonably spent, in respect of the claim or proceedings, multiplied by the reasonable hourly rate of remuneration of the representative;

"damages-based agreement" means a damages-based agreement which relates to an employment matter;

(**1**) 1990 c. 41. Section 58AA was inserted by section 154 of the Coroners and Justice Act 2009 c. 25.
(**2**) Section 120(4) was amended by section 154(3) of the Coroners and Justice Act 2009.
(**3**) 2006 c. 29.

"expenses" means disbursements incurred by the representative, including counsel's fees and the expense of obtaining an expert's report;

"payment" means a part of the sum recovered in respect of the claim or damages awarded that the client agrees to pay the representative and excludes expenses;

"representative" means the person providing the advocacy services, litigation services or claims management services to which the damages-based agreement relates.

(3) These Regulations apply to all damages-based agreements signed on or after the date on which these Regulations come into force.

Requirements of an agreement

2. The requirements prescribed for the purposes of section 58AA(4)(c) of the Act are that the terms and conditions of a damages-based agreement must specify—

(a) the claim or proceedings or parts of them to which the agreement relates;

(b) the circumstances in which the representative's payment, expenses and costs, or part of them, are payable; and

(c) the reason for setting the amount of the payment at the level agreed, including having regard to, where appropriate, whether the claim or proceedings is one of several similar claims or proceedings.

Information to be given before an agreement is made

3.—(1) The information prescribed for the purposes of section 58AA(4)(d) of the Act is—

(a) information, to be provided to the client in writing, about the matters in paragraph (2); and

(b) such further explanation, advice or other information about any of those matters as the client may request.

(2) Those matters are—

(a) the circumstances in which the client may seek a review of the costs and expenses of the representative and the procedure for doing so;

(b) the dispute resolution service provided by the Advisory, Conciliation and Arbitration Service (ACAS) in regard to actual and potential claims;

(c) whether other methods of pursuing the claim or financing the proceedings, including—

(i) advice under the Community Legal Service,

(ii) legal expenses insurance,

(iii) pro bono representation, or

(iv) trade union representation,

are available, and, if so, how they apply to the client and the claim or proceedings in question;

(d) the point at which expenses become payable; and

(e) a reasonable estimate of the amount that is likely to be spent upon expenses, inclusive of VAT.

Additional causes of action

4. Any amendment to a damages-based agreement to cover additional causes of action must be in writing and signed by the client and the representative.

The payment

5. The amount prescribed for the purposes of section 58AA(4)(b) of the Act is the amount which, including VAT, is equal to 35% of the sum ultimately recovered by the client in the claim or proceedings.

Terms and conditions of termination

6.—(1) The additional requirements prescribed for the purposes of section 58AA(4)(c) of the Act are that the terms and conditions of a damages-based agreement must be in accordance with paragraphs (2), (3) and (4).

(2) If the agreement is terminated, the representative may not charge the client more than the representative's costs and expenses for the work undertaken in respect of the client's claim or proceedings.

(3) The client may not terminate the agreement—

(a) after settlement has been agreed; or

(b) within seven days before the start of the tribunal hearing.

(4) The representative may not terminate the agreement and charge costs unless the client has behaved or is behaving unreasonably.

(5) Paragraphs (3) and (4) are without prejudice to any right of either party under the general law of contract to terminate the agreement.

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the requirements with which an agreement between a client and his or her representative must comply so as to enable it to be a damages-based agreement relating to an employment matter under section 58AA of the Courts and Legal Services Act 1990.

Regulation 2 specifies the requirements of the agreement.

Regulation 3 specifies the information that must be given before an agreement can be made.

Regulation 4 specifies that additional causes of action can be added to the agreement by written and signed amendment.

Regulation 5 provides that the amount of the payment, including VAT, must not be greater than 35% of the sum ultimately recovered by the client. "Payment" is defined in regulation 1.

Regulation 6 states that the terms and conditions of an agreement that provide for the termination of the agreement must comply with the following: if the agreement is ended then the representative cannot charge more than his or her costs and expenses for the work done in respect of the client's claim or proceedings; the client may not end the agreement at particular stages; the representative may not end the agreement unless the client has been or is being unreasonable; nothing in regulation 6 prevents a party from exercising a right under the general law of contract to terminate the agreement, for example for misrepresentation or fundamental breach.

An impact assessment has been prepared for these Regulations and can be requested by writing to the Ministry of Justice Private Funding Branch at: privatefundingbranch@justice.gsi.gov.uk

2000 No. 823

LEGAL SERVICES

The Conditional Fee Agreements Order 2000

Made	*20th March 2000*
Coming into force	*1st April 2000*

The Lord Chancellor, in exercise of the powers conferred upon him by section 58(4)(a) and (c) of the Courts and Legal Services Act 1990[1], and all other powers enabling him in that behalf, having consulted in accordance with section 58A(5)[2] of that Act, makes the following Order, a draft of which has been laid before and approved by resolution of each House of Parliament:

Notes

1 Section 58 was substituted by section 27(1) of the Access to Justice Act 1999 (c. 22).

2 Section 58A was added by section 27(1) of the Access to Justice Act 1999 (c. 22).

Extent

Preamble: United Kingdom

Law In Force

1.— Citation, commencement and interpretation

(1) This Order may be cited as the Conditional Fee Agreements Order 2000 and shall come into force on 1st April 2000.

(2) In this Order "the Act" means the Courts and Legal Services Act 1990.

Commencement

art. 1(1)-(2): April 1, 2000

Extent

art. 1(1)-(2): United Kingdom

Law In Force

2. Revocation of 1998 Order

The Conditional Fee Agreements Order 1998 is revoked.

Commencement

art. 2: April 1, 2000

Extent

art. 2: United Kingdom

Law In Force

3. Agreements providing for success fees

All proceedings which, under section 58 of the Act, can be the subject of an enforceable conditional fee agreement, except proceedings under section 82 of the Environmental Protection Act 1990, are proceedings specified for the purposes of section 58(4)(a) of the Act.

Commencement

art. 3: April 1, 2000

Extent

art. 3: United Kingdom

Law In Force

4. Amount of for success fees

In relation to all proceedings specified in article 3, the percentage specified for the purposes of section 58(4)(c) of the Act shall be 100%.

Commencement

art. 4: April 1, 2000

Extent

art. 4: United Kingdom

Law In Force

Irvine of Lairg, C.

Dated 20th March 2000

EXPLANATORY NOTE

(This note is not part of the Order)

Under sections 58 and 58A of the Courts and Legal Services Act 1990, all proceedings may be the subject of an enforceable fee agreement except specified family proceedings and criminal proceedings other than those under section 82 of the Environmental Protection Act 1990. This Order specifies the proceedings to which a conditional fee agreement must relate if it is to provide for a success fee. These are all proceedings which may be the subject of a conditional fee agreement except criminal proceedings under section 82 of the Environmental Protection Act 1990.

Under section 58(4)(c) of the Courts and Legal Services Act 1990, the Order also sets a maximum success fee percentage of 100% for all conditional fee agreements which provide for such fees.

Table of Contents

Conditional Fee Agreements Regulations 2000/692

This version in force from: **April 1, 2000** to **October 31, 2005**

(version 1 of 2)

1.– Citation, commencement and interpretation

(1) These Regulations may be cited as the Conditional Fee Agreements Regulations 2000.

(2) These Regulations come into force on 1st April 2000.

(3) In these Regulations–

"client"includes, except where the context otherwise requires, a person who–

(a) has instructed the legal representative to provide the advocacy or litigation services to which the conditional fee agreement relates, or

(b) is liable to pay the legal representative's fees in respect of those services; and

"legal representative" means the person providing the advocacy or litigation services to which the conditional fee agreement relates.

Conditional Fee Agreements Regulations 2000/692

This version in force from: **April 1, 2000** to **October 31, 2005**

(version 1 of 2)

2.– Requirements for contents of conditional fee agreements: general

(1) A conditional fee agreement must specify–

(a) the particular proceedings or parts of them to which it relates (including whether it relates to any appeal, counterclaim or proceedings to enforce a judgement or order),

(b) the circumstances in which the legal representative's fees and expenses, or part of them, are payable,

(c) what payment, if any, is due–

(i) if those circumstances only partly occur,

(ii) irrespective of whether those circumstances occur, and

(iii) on the termination of the agreement for any reason, and

(d) the amounts which are payable in all the circumstances and cases specified or the method to be used to calculate them and, in particular, whether the amounts are limited by reference to the damages which may be recovered on behalf of the client.

(2) A conditional fee agreement to which regulation 4 applies must contain a statement that the requirements of that regulation which apply in the case of that agreement have been complied with.

Conditional Fee Agreements Regulations 2000/692

This version in force from: **April 1, 2000** to **October 31, 2005**

(version 1 of 2)

3.– Requirements for contents of conditional fee agreements providing for success fees

(1) A conditional fee agreement which provides for a success fee–

(a) must briefly specify the reasons for setting the percentage increase at the level stated in the agreement, and

(b) must specify how much of the percentage increase, if any, relates to the cost to the legal representative of the postponement of the payment of his fees and expenses.

(2) If the agreement relates to court proceedings, it must provide that where the percentage increase becomes payable as a result of those proceedings, then–

(a) if–

(i) any fees subject to the increase are assessed, and

(ii) the legal representative or the client is required by the court to disclose to the court or any other person the reasons for setting the percentage increase at the level stated in the agreement,

he may do so,

(b) if–

(i) any such fees are assessed, and

(ii) any amount in respect of the percentage increase is disallowed on the assessment on the ground that the level at which the increase was set was unreasonable in view of facts which were or should have been known to the legal representative at the time it was set,

that amount ceases to be payable under the agreement, unless the court is satisfied that it should continue to be so payable, and

(c) if–

(i) sub-paragraph (b) does not apply, and

(ii) the legal representative agrees with any person liable as a result of the proceedings to pay fees subject to the percentage increase that a lower amount than the amount payable in accordance with the conditional fee agreement is to be paid instead,

the amount payable under the conditional fee agreement in respect of those fees shall be reduced accordingly, unless the court is satisfied that the full amount should continue to be payable under it.

(3) In this regulation "percentage increase" means the percentage by which the amount of the fees which would be payable if the agreement were not a conditional fee agreement is to be increased under the agreement.

Conditional Fee Agreements Regulations 2000/692

This version in force from: **February 2, 2004** to **October 31, 2005**

(version 2 of 3)

[

3— Requirements where the client's liability is limited to sums recovered

(1) This regulation applies to a conditional fee agreement under which, except in the circumstances set out in [paragraphs (5) and (5A)] [2], the client is liable to pay his legal representative's fees and expenses only to the extent that sums are recovered in respect of the relevant proceedings, whether by way of costs or otherwise.

(2) In determining for the purposes of paragraph (1) the circumstances in which a client is liable to pay his legal representative's fees and expenses, no account is to be taken of any obligation to pay costs in respect of the premium of a policy taken out to insure against the risk of incurring a liability in the relevant proceedings.

(3) Regulations 2, 3 and 4 do not apply to a conditional fee agreement to which this regulation applies.

(4) A conditional fee agreement to which this regulation applies must–

(a) specify–

(i) the particular proceedings or parts of them to which it relates (including whether it relates to any appeal, counterclaim or proceedings to enforce a judgment or order); and

(ii) the circumstances in which the legal representative's fees and expenses, or part of them, are payable; and

(b) if it provides for a success fee–

(i) briefly specify the reasons for setting the percentage increase at the level stated in the agreement; and

(ii) provide that if, in court proceedings, the percentage increase becomes payable as a result of those proceedings and the legal representative or the client is ordered to disclose to the court or any other person the reasons for setting the percentage increase at the level stated in the agreement, he may do so.

(5) A conditional fee agreement to which this regulation applies may specify that the client will be liable to pay the legal representative's fees and expenses whether or not sums are recovered in respect of the relevant proceedings, if the client–

(a) fails to co-operate with the legal representative;

(b) fails to attend any medical or expert examination or court hearing which the legal representative reasonably requests him to attend;

(c) fails to give necessary instructions to the legal representative; [...] [3]

(d) withdraws instructions from the legal representative [;] [4]

[

(e) is an individual who is adjudged bankrupt or enters into an arrangement or a composition with his creditors, or against whom an administration order is made; or

(f) is a company for which a receiver, administrative receiver or liquidator is appointed.

] [4]

[

(5A) A conditional fee agreement to which this regulation applies may specify that, in the event of the client dying in the course of the relevant proceedings, his estate will be liable for the legal

representative's fees and expenses, whether or not sums are recovered in respect of those proceedings.

] [5]

(6) Before a conditional fee agreement to which this regulation applies is made, the legal representative must inform the client as to the circumstances in which the client [or his estate] [6] may be liable to pay the legal representative's fees and expenses, and provide such further explanation, advice or other information as to those circumstances as the client may reasonably require.

] [1]

1. Possible drafting error - reg.3 is purportedly inserted but that provision already exists by Conditional Fee Agreements (Miscellaneous Amendments) Regulations 2003/1240 reg.2(2) (June 2, 2003)
2. Words substituted by Conditional Fee Agreements (Miscellaneous Amendments) (No. 2) Regulations 2003/3344 reg.2(2) (February 2, 2004)
3. Word repealed by Conditional Fee Agreements (Miscellaneous Amendments) (No. 2) Regulations 2003/3344 reg.2(3)(a) (February 2, 2004)
4. Added by Conditional Fee Agreements (Miscellaneous Amendments) (No. 2) Regulations 2003/3344 reg.2(3)(b) (February 2, 2004)
5. Added by Conditional Fee Agreements (Miscellaneous Amendments) (No. 2) Regulations 2003/3344 reg.2(4) (February 2, 2004)
6. Words inserted by Conditional Fee Agreements (Miscellaneous Amendments) (No. 2) Regulations 2003/3344 reg.2(5) (February 2, 2004)

Status: Superseded

Conditional Fee Agreements Regulations 2000/692

This version in force from: **April 1, 2000** to **October 31, 2005**

(version 1 of 2)

4.— Information to be given before conditional fee agreements made

(1) Before a conditional fee agreement is made the legal representative must–

(a) inform the client about the following matters, and

(b) if the client requires any further explanation, advice or other information about any of those matters, provide such further explanation, advice or other information about them as the client may reasonably require.

(2) Those matters are–

(a) the circumstances in which the client may be liable to pay the costs of the legal representative in accordance with the agreement,

(b) the circumstances in which the client may seek assessment of the fees and expenses of the legal representative and the procedure for doing so,

(c) whether the legal representative considers that the client's risk of incurring liability for costs in respect of the proceedings to which agreement relates is insured against under an existing contract of insurance,

(d) whether other methods of financing those costs are available, and, if so, how they apply to the client and the proceedings in question,

(e) whether the legal representative considers that any particular method or methods of financing any or all of those costs is

appropriate and, if he considers that a contract of insurance is appropriate or recommends a particular such contract–

(i) his reasons for doing so, and

(ii) whether he has an interest in doing so.

(3) Before a conditional fee agreement is made the legal representative must explain its effect to the client.

(4) In the case of an agreement where–

(a) the legal representative is a body to which section 30 of the Access to Justice Act 1999 (recovery where body undertakes to meet costs liabilities) applies, and

(b) there are no circumstances in which the client may be liable to pay any costs in respect of the proceedings,

paragraph (1) does not apply.

(5) Information required to be given under paragraph (1) about the matters in paragraph (2)(a) to (d) must be given orally (whether or not it is also given in writing), but information required to be so given about the matters in paragraph (2)(e) and the explanation required by paragraph (3) must be given both orally and in writing.

(6) This regulation does not apply in the case of an agreement between a legal representative and an additional legal representative.

Status: Superseded

Conditional Fee Agreements Regulations 2000/692

This version in force from: **April 1, 2000** to **October 31, 2005**

(version 1 of 2)

5.– Form of agreement

(1) A conditional fee agreement must be signed by the client and the legal representative.

(2) This regulation does not apply in the case of an agreement between a legal representative and an additional legal representative.

Status: Superseded

Conditional Fee Agreements Regulations 2000/692

This version in force from: **June 2, 2003** to **October 31, 2005**

(version 2 of 3)

6. Amendment of agreement

Where an agreement is amended to cover further proceedings or parts of them–

(a) [regulations 2, 3, 3A and 5] [1] apply to the amended agreement as if it were a fresh agreement made at the time of the amendment, and

(b) the obligations under regulation 4 apply in relation to the amendments in so far as they affect the matters mentioned in that regulation.

1. Word inserted by Conditional Fee Agreements (Miscellaneous Amendments) Regulations 2003/1240 reg.2(3) (June 2, 2003)

Status: Superseded

Conditional Fee Agreements Regulations 2000/692

This version in force from: **April 1, 2000** to **October 31, 2005**

(version 1 of 2)

7. Revocation of 1995 Regulations

The Conditional Fee Agreements Regulations 1995 are revoked.

Status: Superseded

Conditional Fee Agreements Regulations 2000/692

This version in force from: **November 30, 2000** to **October 31, 2005**

(version 1 of 2)

[

8. Exclusion of collective conditional fee agreements

These Regulations shall not apply to collective conditional fee agreements within the meaning of regulation 3 of the Collective Conditional Fee Agreements Regulations 2000.

] [1]

1. Added by Collective Conditional Fee Agreements Regulations 2000/2988 reg.7 (November 30, 2000)