

DRAFT

The Damages-Based Agreements Regulations 2012

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 58AA(4) of the Courts and Legal Services Act 1990(a).

He has consulted the designated judges, the General Council of the Bar and the Law Society 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.

Citation, commencement, interpretation and application

1. (1) These Regulations may be cited as the Damages-Based Agreements Regulations 2012 and come into force on April 2013.

(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(b)) and is liable to make a payment for those services;

“costs” mean 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 within the meaning of section 58AA(3)(a) of the Act;

“employment matters” means a matter that is, or could become, the subject of proceedings before an employment tribunal;

“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;

‘claim for personal injuries’ means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s

death, and ‘personal injuries’ includes any disease and any impairment of a person’s physical or mental condition;

“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 or otherwise agreed as appropriate on or after the date on which these Regulations come into force.

Agreement to comply with prescribed requirements

2. An agreement shall not be an enforceable damages-based agreement unless it complies with the applicable requirements of regulations 3, 4, 5, 6 and 7.

Requirements of an agreement

3. A damages-based agreement 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.

Information to be given before an agreement relating to employment matters is made

4. (1) Before a damages-based agreement which relates to an employment matter is signed the representative must
 - (a) inform the client, in writing about the matters in paragraph (2); and
 - (b) provide such further explanation, advice or other information about any of those matter as the client may request.
- (2) Those matter 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) information regarding 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.

Information to be given before an agreement for the provision of claims management services is made

5. (1) Before a damages-based agreement which relates to the provision of claims management services is signed the representative must
- (a) inform the client, in writing about the matters in paragraph (2); and
 - (b) provide such further explanation, advice or other information about any of those matter as the client may request.
- (2) Those matter are-
- (a) such matters as prescribed by regulation made in accordance with section 9 of the Compensation Act 2006 including but not limited to the Conduct of Authorised Persons Rules or any replacement thereof;
 - (b) the circumstances in which the client may make a complaint to the representative in accordance with any regulations or rules made by the Claims Management Regulator, the procedure for doing so and the procedure for making complaint to the Claims Management Regulator in the event of dissatisfaction with the representatives response;
 - (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;
 - (e) the point at which any expenses become payable; and
 - (f) a reasonable estimate of the amount that is likely to be spent upon expenses, inclusive of VAT

Form of an agreement

6. A damages-based agreement relating to employment matters or for claims management services, and any amendment to it to cover additional causes of action, must be in writing and signed by the client and the representative.

The payment

7. For the purposes of this regulation-
 - (1) the “amount of the payment” shall be a reference to a payment that is inclusive of all fees relating to advocacy, litigation and claims management services;
 - (2) “expenses” shall be a reference to expenses incurred including the expense of insurance but shall not include any expenses for advocacy services;
 - (3) “sums recovered” shall be a reference to all sums other than costs that are paid or payable in a claim whether by agreement or judgment .
8. The amount of the payment in relation to employment matters, including VAT, must not exceed 35% of the sum recovered by the client in the claim or proceedings.
9. The amount of the payment in relation to a claim for personal injuries, including VAT, but excluding expenses, must not exceed 25% of the sum recovered by the client in the claim or proceedings..

Termination of an agreement relating to employment matters

10.
 - (1) If a damages-based agreement relating to employment matters 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.
 - (2) The client may not terminate an agreement relating to employment matters
 - (a) after liability has been admitted;
 - (b) settlement has been agreed; or
 - (c) within seven days before the start of the tribunal hearing.
 - (3) The representative may not terminate an agreement relating to employment matters and charge costs unless the client has behaved or is behaving unreasonably.

Signed by authority of the Lord Chancellor

Parliamentary Under Secretary of State
Ministry of Justice

Date

David Greene
Partner