
STATUTORY INSTRUMENTS

2013 No. 611

The Civil Legal Aid (Costs) Regulations 2013

PART 3

**COSTS ORDERS AGAINST A LEGALLY AIDED
PARTY AND THE LORD CHANCELLOR**

Effect of this Part

9.—(1) This Part applies where cost protection applies.

(2) The court may not, except in accordance with this Part, make an order requiring the Lord Chancellor to pay the whole or part of any costs incurred by a non-legally aided party because the proceedings are relevant proceedings as regards another party.

Costs order against the Lord Chancellor

10.—(1) This regulation applies where relevant proceedings are finally decided in favour of a non-legally aided party.

(2) Subject to paragraphs (3) to (8), the court may make an order for the payment by the Lord Chancellor to the non-legally aided party of the whole or any part of the costs incurred by that party in the proceedings (other than the costs that the legally aided party is required to pay under a section 26(1) costs order).

(3) An order under paragraph (2) may only be made if the following conditions are satisfied—

(a) a section 26(1) costs order is made against the legally aided party in the proceedings, and the amount (if any) which the legally aided party is required to pay under that costs order is less than the amount of the full costs;

(b) the non-legally aided party makes a request—

(i) under regulation 16(2), within three months of the date on which the section 26(1) costs order is made; or

(ii) after the expiry of the time limit under regulation 16(2), where there is a good reason for the delay in the request being made;

(c) as regards costs incurred in a court of first instance, the following conditions are met—

(i) the proceedings were instituted by the legally aided party;

(ii) the non-legally aided party is an individual; and

(iii) the court is satisfied that the non-legally aided party will suffer financial hardship unless the order is made; and

(d) in any case, the court is satisfied that it is just and equitable in the circumstances that provision for the costs should be made out of public funds.

(4) Where the legally aided party receives civil legal services in connection with only part of the proceedings, the reference in paragraph (2) to the costs incurred by the non-legally aided party in

the proceedings is to be construed as a reference to so much of those costs as is attributable to the part of the proceedings for which civil legal services are provided.

(5) Where a court decides any proceedings in favour of a non-legally aided party and an appeal lies (with or without permission) against that decision, any order made under this regulation must not take effect—

- (a) where permission to appeal is required, unless the time limit for an application for permission to appeal expires without such an application being made;
- (b) where an application for permission is made within the time limit, unless the application is refused; or
- (c) where permission to appeal is granted or is not required, unless the time limit for appeal expires without an appeal being brought.

(6) Subject to paragraph (7), in determining whether the conditions in paragraph (3)(c)(iii) and (d) are satisfied, the court must have regard to the resources of the non-legally aided party and of that party's partner.

(7) The court must not have regard to the resources of the partner of the non-legally aided party if the partner has a contrary interest in the proceedings.

(8) Where the non-legally aided party is acting in a representative, fiduciary or official capacity and is entitled to be indemnified in respect of costs from any property, estate or fund, the court must, for the purposes of determining whether the conditions in paragraph (3)(c)(iii) and (d) are satisfied, have regard to the value of the property, estate or fund and the resources of any person who has a beneficial interest in that property, estate or fund.

Enforcement of costs order against a legally aided party

11. Where, for the purpose of enforcing a costs order against a legally aided party who is not a legal person, a charging order is made under section 1 of the Charging Orders Act 1979⁽¹⁾ (alone or together with any other judgment or order) in respect of that party's interest in the main or only dwelling in which that party resides—

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

Security for costs

12.—(1) Where in any proceedings a legally aided party is required to give security for costs, the amount of that security must not exceed the amount (if any) which is reasonable having regard to all the circumstances, including—

- (a) the legally aided party's resources; and
- (b) the legally aided party's conduct in connection with the dispute to which the proceedings relate.

(2) For the purposes of this regulation, the resources of the legally aided party's partner are not to be treated as the resources of the legally aided party.

(1) 1979 c. 53.

Assessment of resources

13.—(1) The first £100,000 of the value of the legally aided party's interest in the main or only dwelling in which the legally aided party resides must not be taken into account in having regard to that party's resources for the purposes of section 26(1) of the Act.

(2) In having regard to the legally aided party's resources for the purposes of section 26(1) of the Act, the court may not take into account the legally aided party's clothes or household furniture, or the implements of that party's trade, unless, and if so only to the extent that, the court considers the circumstances of the case are exceptional, having regard in particular to the quantity or value of the items concerned.

(3) Subject to paragraph (4), in having regard to the resources of a party to the proceedings for the purposes of section 26(1) of the Act, the resources of the party's partner are to be treated as the resources of the party to the proceedings.

(4) The resources of a party's partner are not to be treated as that party's resources if the partner has a contrary interest in the proceedings.

(5) For the purposes of section 26(1) of the Act, where a party is acting in a representative, fiduciary or official capacity, the court—

- (a) subject to sub-paragraph (c), must not take the personal resources of the party acting in such a capacity into account;
- (b) must have regard to the value of any property or estate, or the amount of any fund, out of which that party is entitled to be indemnified; and
- (c) may also have regard to the resources of any person who has a beneficial interest in that property, estate or fund, including, if applicable, that party.

(6) For the purposes of section 26(1) of the Act, where a party is acting as a litigation friend to a legally aided party, the court must not take the personal resources of the litigation friend into account in assessing the resources of the legally aided party.

(7) This regulation does not apply in respect of a legally aided party who is a legal person.

Statements of resources

14.—(1) For the purposes of this Part, a statement of resources is a statement, verified by a statement of truth—

- (a) made by a party to proceedings, other than a legally aided party who is a legal person, setting out—
 - (i) the party's income and capital and financial commitments during the previous year and, if applicable, those of the party's partner;
 - (ii) the party's estimated future financial resources and expectations and, if applicable, those of the party's partner; and
 - (iii) a declaration stating whether the party, and, if applicable, the party's partner, have deliberately forgone or deprived themselves of any resources or expectations, together (if applicable and as far as is practical) with details of those resources or expectations and the manner in which they have been forgone or the party or partner deprived of them;
 - (iv) particulars of any application for legal aid made by the party in connection with the proceedings; and
 - (v) any other facts relevant to the determination of the party's resources; or
- (b) made by a legally aided party—

- (i) setting out the information previously provided by that party in order to determine that the party's financial resources were such that the party was eligible for civil legal services; and
- (ii) either stating that there has been no significant change in the party's financial circumstances since the date on which the information was provided or, as the case may be, providing details of any such change.

(2) Any party to proceedings in which another party is a legally aided party may make a statement of resources, and file it with the court.

(3) A person making and filing a statement of resources under paragraph (2) must serve a copy of it on the legally aided party.

(4) If the copy of a statement of resources served under paragraph (3) has been served not less than seven days before the date fixed for a hearing at which the amount to be paid under a section 26(1) costs order falls, or may fall, to be decided, the legally aided party must also make a statement of resources, and must produce it at that hearing.

Determination of costs

15.—(1) Where the court is considering whether to make a section 26(1) costs order, it must consider whether—

- (a) but for cost protection, it would have made a costs order against the legally aided party; and
- (b) if so, whether, on making the costs order, it would 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 legally aided party, but that it would not have specified the amount to be paid under it, the court must, when making the section 26(1) costs order—

- (a) specify the amount (if any) that the legally aided party is to pay under that order if—
 - (i) it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the legally aided party to pay, in accordance with section 26(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 (i) above; or
- (b) not otherwise specify the amount that the legally aided party is to pay under that order.

(3) If the court considers that it would have made a costs order against the legally aided party, and that it would have specified the amount to be paid under it, the court must, when making the section 26(1) costs order—

- (a) specify the amount (if any) that the legally aided party is to pay under that order if it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the legally aided party to pay, in accordance with section 26(1) of the Act; or
- (b) not otherwise specify the amount the legally aided party is to pay under that order.

(4) Any order made under paragraph (3) must state the amount of the full costs.

(5) Regulation 16 applies to the determination of—

- (a) the amount (if any) to be paid by the legally aided party where paragraph (2)(b) or paragraph (3)(b) applies; and
- (b) any application for a costs order against the Lord Chancellor.

(6) Where a determination under regulation 16 follows an order to which paragraph (2)(b) applies, the amount of the full costs must also be assessed.

(7) Where the court makes a section 26(1) costs order that does not specify the amount which the legally aided party is to pay under it, it may also make findings of fact (as to the parties' conduct in connection with the dispute to which the proceedings relate or otherwise) relevant to the determination of that amount, and those findings must be taken into consideration in that determination.

Determination of costs where no amount specified

16.—(1) Paragraphs (2) to (12) apply where the amount to be paid under a section 26(1) costs order, or an application for a costs order against the Lord Chancellor, is to be determined under this regulation in accordance with regulation 15(5).

(2) Subject to regulations 10(3)(b)(ii) and 19(3), the receiving party may, within three months of the date on which a section 26(1) costs order is made, request a hearing to determine the amount to be paid to that party.

(3) A request under paragraph (2) must be accompanied by—

- (a) if the section 26(1) costs order does not state the full costs, the receiving party's bill of costs, which must 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) unless the conditions set out in paragraph (4) are satisfied, a statement of resources; and
- (c) if the receiving party is seeking a costs order against the Lord Chancellor or may seek such an order subject to the determination of the amount to be paid under the section 26(1) costs order, written notice to that effect.

(4) The conditions referred to in paragraph (3)(b) are that—

- (a) the court is determining an application for a costs order against the Lord Chancellor; and
- (b) the costs were not incurred in a court of first instance.

(5) The receiving party must file the documents referred to in paragraph (3) with the court and at the same time serve copies of them—

- (a) on the legally aided party, if a determination of costs payable under section 26(1) of the Act is sought; and
- (b) on the Lord Chancellor, if notice has been given under paragraph (3)(c).

(6) Where documents are served on the legally aided party under paragraph (5)(a), that party must make a statement of resources.

(7) The legally aided party must, within 21 days of the date of receipt of a copy of the receiving party's statement of resources—

- (a) file with the court the statement of resources made under paragraph (6);
- (b) serve a copy of that statement on the receiving party; and
- (c) if notice has been given under paragraph (3)(c), serve a copy of that statement on the Lord Chancellor.

(8) The legally aided party may, at the same time as filing and serving a statement of resources under paragraph (7), 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).

(9) If the legally aided party, without good reason, fails to file a statement of resources in accordance with paragraph (7), the court—

- (a) must determine the amount which that party is to be required to pay under the section 26(1) costs order (and, if relevant, the full costs), having regard to the statement made by the receiving party; and
 - (b) may do so without an oral hearing.
- (10) Subject to paragraph (9)(b), the court must set a date for the hearing if—
- (a) the legally aided party files a statement of resources in accordance with paragraph (7);
 - (b) the period for filing the statement under paragraph (7) expires; or
 - (c) the costs payable by the legally aided party have already been determined.
- (11) The court must, at least 14 days before the hearing date, serve notice of the date on—
- (a) the receiving party;
 - (b) the legally aided party (unless the costs payable by that party have already been determined); and
 - (c) if a costs order against the Lord Chancellor is or may be sought, the Lord Chancellor.
- (12) The amount of costs to be determined under this regulation may include the costs incurred in relation to a request under paragraph (2).

Payment on account of costs

17.—(1) Where the court—

- (a) makes a section 26(1) costs order but does not specify the amount which the legally aided party is to pay under it; and
- (b) has sufficient information before it to decide the minimum amount which the legally aided party is likely to be ordered to pay on a determination under regulation 16,

the court may order the legally aided party to pay an amount on account of the costs which are the subject of the order.

(2) The amount of any payment on account of costs must not exceed the minimum amount which the court decides that the legally aided party is likely to be ordered to pay on a determination under regulation 16.

(3) Where the court orders a legally aided party to make a payment on account of costs—

- (a) it must order the legally aided party to make the payment into court; and
- (b) the payment must remain in court unless and until the court—
 - (i) makes a determination under regulation 16 of the amount which the legally aided party should pay to the receiving party under the section 26(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 legally aided party's liability under that order; or
 - (ii) makes an order under paragraph (4)(b) or (c) that the payment on account or part of it be repaid to the legally aided party.

(4) Where a legally aided party has made a payment on account of costs pursuant to an order under paragraph (1)—

- (a) the receiving party must request a hearing under regulation 16;
- (b) if the receiving party fails to request such a hearing within the time permitted by regulation 16(2), the payment on account must be repaid to the legally aided party;
- (c) if upon the hearing under regulation 16 the amount of costs which it is determined that the legally aided party should pay is less than the amount of the payment on account, the difference must be repaid to the legally aided party.

Appeals, etc.

18.—(1) Subject to this regulation and regulation 19, any determination under regulation 15 or regulation 16 is 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, the party would but for this Part be entitled to appeal against an assessment of costs by the court in which the relevant proceedings are taking place.

(3) Where the court has under regulation 15(2)(a) specified an amount which a legally aided party is required to pay under a section 26(1) costs order, the legally aided party may apply to the court for a determination of the full costs.

(4) If, on a determination under paragraph (3), the amount of the full costs is less than the amount which the court previously specified under regulation 15(2)(a), the legally aided party must instead be required to pay the amount of the full costs.

(5) The receiving party or the Lord Chancellor may appeal, on a point of law, against the making of a costs order against the Lord Chancellor (including the amount of costs which the Lord Chancellor is required to pay under the order), or, in the case of the receiving party, against the court's refusal to make such an order.

Variation and late determination of amount of costs

19.—(1) This regulation applies where the court makes a section 26(1) costs order.

(2) Where the amount (if any) which the legally aided party is required to pay under the section 26(1) costs order, together with the amount which the Lord Chancellor is required to pay under any costs order against the Lord Chancellor, 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 legally aided party is required to pay under the section 26(1) costs order.

(3) The receiving party may, on any of the grounds set out in paragraph (4), apply for a determination of the amount that the legally aided party is required to pay where—

- (a) the receiving party has not, within the time limit in regulation 16(2), applied to have that amount determined in accordance with regulation 16; and
- (b) the court has not specified the amount to be paid under the section 26(1) costs order.

(4) The grounds referred to in paragraphs (2) and (3) are that—

- (a) there has been a significant change in the legally aided party's circumstances since the date of the order;
- (b) material additional information as to the legally aided party's 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 16; or
- (c) there is a good reason for the receiving party's delay in making the request within the time limit under regulation 16(2).

(5) Any application under paragraph (2) or (3) must be made by the receiving party within six years from the date on which the section 26(1) costs order is first made.

(6) On any application under paragraph (2), the amount that the legally aided party is required to pay under the section 26(1) costs 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)) must not exceed the amount of the full costs.

(7) When the amount which the legally aided party is required to pay under the section 26(1) costs order has been determined under regulation 15(2)(a), and the receiving party applies under paragraph (2) for an order varying that amount—

- (a) the receiving party must file with the application under paragraph (2) that party's bill of costs, which must 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 must, when determining the application, assess the full costs.
- (8) Where civil legal services have been provided to the receiving party in relation to the proceedings, the Lord Chancellor may make an application under paragraph (2) or (3), and—
- (a) when making the application the Lord Chancellor must 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) and (5) apply to that application as if "the Lord Chancellor" 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.

Rights to appear

- 20.**—(1) The Lord Chancellor and the receiving party may appear at—
- (a) any hearing in relation to which notice has been given under regulation 16(3)(c);
 - (b) the hearing of any appeal under regulation 18(5); or
 - (c) the hearing of any application under regulation 19(8).
- (2) The Lord Chancellor 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 Lord Chancellor must 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.