
STATUTORY RULES OF NORTHERN IRELAND

2015 No. 200

The Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015

PART 3

ENFORCEMENT OF THE STATUTORY CHARGE

Application of regulations 11 to 17

10.—(1) Regulations 11 to 17 apply only where funded services have been provided under a certificate.

(2) If the client is no longer being represented by a solicitor, all money to which regulation 11(1) applies shall be paid (or repaid) to the Department, and all references in regulations 11(1) and 12 to the client's solicitor shall be construed as references to the Department.

Money recovered to be paid to solicitor

11.—(1) Subject to the following paragraphs of this regulation, and to regulation 10(2), all money payable to or recovered by a client in connection with a dispute by way of damages, costs or otherwise, whether or not proceedings were begun, and whether under an order of the court or an agreement or otherwise, shall be paid to the client's solicitor, and only the client's solicitor shall be capable of giving a good discharge for that money.

(2) Paragraph (1) shall not apply to—

- (a) any periodical payment of maintenance; or
- (b) any money recovered by a client in any proceedings which—
 - (i) has been paid into, or remains in, court, and is invested for the client's benefit; and
 - (ii) under regulation 9 is not subject to the statutory charge.

(3) Where the client's solicitor has reason to believe that an attempt may be made to circumvent the provisions of paragraph (1), they shall inform the Department immediately.

Notice to third parties

12.—(1) Where money is payable under regulation 11, and that money is payable by a trustee in bankruptcy, a trustee or assignee of a deed of arrangement, a liquidator of a company in liquidation, a trustee of a pension fund or any other third party ("the third party"), the client's solicitor shall send to the third party notice that funded services have been funded for the client by the Department.

(2) Notice under paragraph (1) shall operate as a request by the client that money payable under regulation 11 be paid to their solicitor, and shall be a sufficient authority for that purpose.

Solicitor to pay money recovered to Department

13.—(1) The client's solicitor shall forthwith—

- (a) inform the Department of any money or other property recovered, and send the Department a copy of the order or agreement by virtue of which the property was recovered;
- (b) subject to the following paragraphs of this regulation, pay to the Department all money or other property received by the solicitor under regulation 11.

(2) Paragraph (1)(b) shall not apply to any money or other property which is not subject to the statutory charge by virtue of regulation 4.

(3) The Department may direct the client's solicitor to—

- (a) pay to the Department under paragraph (1)(b) only such sums as, in the Department's opinion, should be retained by the Department in order to safeguard its interests; and
- (b) pay any other money to the client.

(4) Where the solicitor pays money to the Department in accordance with this regulation, the solicitor shall identify what sums relate respectively to—

- (a) costs;
- (b) damages;
- (c) interest on costs; and
- (d) interest on damages.

Retention and payment out of money by the Department

14.—(1) The Department shall deal with the money paid to it under this Part in accordance with this regulation.

(2) The Department shall retain—

- (a) an amount equal to the costs incurred in taking steps under regulation 15;
- (b) an amount equal to that part of the funded sum already paid to the supplier in respect of the relevant work; and
- (c) where costs are paid to the Department together with interest, an amount equal to that interest, less the amount of any interest payable to the supplier under paragraph (3)(b)(ii).

(3) The Department shall pay to the supplier—

- (a) any outstanding amount of the funded sum payable to them in respect of the relevant work;
- (b) where costs are ordered or agreed to be paid to the client, and those costs are received by the Department, and those costs (less any amount retained under paragraph (2)(a) or payable under paragraph (5)) exceed the funded sum—
 - (i) an amount equal to the amount of the excess; and
 - (ii) where those costs are paid to the Department together with interest, an amount equal to the interest attributable to the excess referred to in head (i).

(4) Paragraph (5) applies where a solicitor has acted on behalf of the client in proceedings before that client receives funded services in respect of the same proceedings, or has a lien on any documents necessary to proceedings to which a client is a party, and has handed them over subject to the lien, but applies only so far as is consistent with the express terms of any contract between the Department and the solicitor.

(5) Where the solicitor referred to in paragraph (4) gives the Department written notice that this paragraph applies, the Department shall pay to that solicitor the costs to which that solicitor would have been entitled if those costs had been assessed on an indemnity basis.

(6) Where the amount of costs payable under paragraph (5) has not been assessed by the court, they may instead be assessed by the Department.

(7) Where the amount received by the Department, less any amount retained under paragraph (2) (a), is insufficient to meet the funded sum and any sum payable under paragraph (5), the Department shall apportion the amount received proportionately between the two.

(8) The Department shall pay all the money paid to it under this Part, which is not paid or retained under paragraphs (2) to (5), to the client.

(9) The Department may defer payment of the funded sum to the client's supplier until they have given effect to any provisions in these Regulations.

Enforcement of orders etc. in favour of client

15.—(1) Where, in relation to any dispute to which a client is a party, whether or not proceedings are begun—

- (a) an order or agreement is made providing for the recovery or preservation of property by the client (whether for the client or any other person); or
- (b) there is a client's costs order or client's costs agreement,

the Department may take any steps, including proceedings in its own name, as may be necessary to enforce or give effect to that order or agreement.

(2) A client may, with the consent of the Department, take proceedings to give effect to an order or agreement under which they are entitled to recover or preserve money or other property.

(3) Subject to paragraph (4), the client's solicitor may take proceedings for the recovery of costs where a client's costs order or a client's costs agreement has been made.

(4) Where the client's costs order or client's costs agreement relates wholly or partly to costs incurred in carrying out work which is remunerated, or to be remunerated, in the funded sum, but those costs have not been reimbursed by payment from any other party in favour of the client, the solicitor shall require the consent of the Department before taking proceedings to which paragraph (3) refers.

(5) Where the Department takes proceedings, it may authorise any person to take any step in the proceedings in its name.

(6) The costs incurred by the Department in taking any step to enforce an order or agreement where paragraph (1) applies shall be a first charge on any property or sum so recovered.

Enforcement of the statutory charge

16.—(1) This regulation applies only in relation to a statutory charge in favour of the Department.

(2) The Department may enforce the statutory charge in any manner which would be available to a chargee in respect of a charge given between parties to proceedings.

(3) All conveyances and acts done to defeat, or operating to defeat, the statutory charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void against the Department.

Interest on damages

17.—(1) Where the Department receives damages paid in favour of a client it shall, subject to the following paragraphs, pay to the client a sum representing the net interest earned while the damages are being held by the Department.

(2) Without prejudice to its other powers to invest money, the Department shall maintain and may deposit damages to which this regulation refers in individual accounts at a deposit taker.

(3) The rate of interest payable to the client under this regulation shall be the rate payable on damages deposited in the individual account.

(4) Subject to paragraph (5), interest shall be payable for the period beginning on the second business day after the date on which damages are received by the Department to and including the date on which the Department determines the amount to be paid under regulation 14(8).

(5) If the damages are received by the Department by way of cheque, interest shall only become payable once the cheque has cleared with the deposit taker and the damages monies have been applied to the Department's account.

(6) In this regulation —

“business day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday, a bank holiday under the Banking and Financial Dealings Act 1971⁽¹⁾ or a day when the Department is not open for business; or any other day when the deposit taker providing banking services to the Department is not open for business.

“deposit taker” means the bank which is providing banking services to the Department, or the branch, situated in Northern Ireland of either —

- (a) a person with permission under Part 4 of the Financial Services and Markets Act 2000⁽²⁾ to accept deposits, or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits;

“individual account” means an interest bearing account opened in the name of the Department designated in the name of the client to enable the Department to hold funds on behalf of a client.

(7) The definition of “deposit taker” in paragraph (6) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 22 to that Act.

Unclaimed damages

18.—(1) On or before 31st March in each year the Department shall carry over any unclaimed damages to an account of unclaimed balances (“the account”).

(2) On or before 1st June in each year the Department shall prepare a list of the names of the individuals who received funded services in respect of whom damages have been carried over to the account in accordance with paragraph (1), which shall be filed in the Department.

(3) A copy of the list referred to in paragraph (2) may be inspected at the office of the Department to which an application for civil legal services would ordinarily be made, upon prior written request, by a person claiming that they have a beneficial interest.

(4) On receipt of a written request for information concerning any damages carried over to the account in respect of which the person making the request claims to have a beneficial interest, the Department may supply such information relating to that request as it considers appropriate.

(5) For the purposes of this regulation, damages shall be treated as unclaimed if—

(1) 1971 c. 80
(2) 2000 c. 8

- (i) they stand to the credit of an individual who received funded services, upon which there has been no claim for payment by any person asserting a beneficial or other interest for a continuous period of 6 years immediately before the last preceding 1st March; and
- (ii) the Department is satisfied that all appropriate steps have been taken to effect payment to the person entitled to the damages.